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ABSTRACT

This handbook, an updated and revised version of the 1975 original, contains the new statutory requirements, state board of education rules, and court decisions pertaining to teacher dismissal in Illinois. This handbook is designed to acquaint Illinois school administrators and school board members with the legal procedures necessary in dismissal cases, especially in those that involve complicated charges, such as failure to maintain discipline, to prepare lesson plans, and to cooperate with associates. The authors emphasize that the complex web of legal procedures involved in dismissal requires the early assistance of the school attorney. The handbook discusses the due process requirements and the conduct of dismissal hearings for both tenured and probationary teachers. Sample dismissal forms, nonrenewal forms, and evaluations are included. (Author/DS)

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1977 Revised Edition

Formal Dismissal Procedures

Under Illinois Teacher Tenure Laws

By
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The School Board shall have the power . . .

"To dismiss a teacher for incompetency, cruelty, negligence, immorality or other sufficient cause and to dismiss any teacher whenever, in its opinion, he is not qualified to teach, or whenever, in its opinion, the interests of the schools require it, subject, however, to the provisions of Sections 24-10 to 24-15, inclusive. Marriage is not a cause of removal."

Section 10-22.4
The School Code
Chapter 122, *Illinois Revised Statutes*

(Note: Sections 24-10 to 24-15 of the *Illinois School Code*, referred to above, make up what is known as The Teacher Tenure Laws.)

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Foreword to the 1975 Edition

As the authors of this handbook state in their preface, a school board's authority to dismiss a teacher is regulated by a variety of controls that together "weave a complex web of legal procedures requiring the early assistance of the school attorney." To that observation we can only add that the procedures become more complex each day.

A teacher dismissal, due to its emotional aspects, can become a source of discord. Board members, administrators, teachers, parents, and students can get caught up in the conflicts that arise. Yet, when dismissals are warranted, it is the duty of the school administrator and the school board to proceed accordingly. In such cases, both the employer and the employee are entitled to the full protection of the law as contained in the statutes and interpreted by the courts.

This handbook is designed to help school employers achieve both fairness and legality in their teacher dismissal proceedings. We do not expect that any handbook can eliminate the emotional aspects of dismissal. But we do firmly believe that the impact of emotion on the dismissal proceedings and on the school/community can be held to a minimum if school officials abide by the principles set forth in this handbook.

Of all the principles set forth in this book, the one we endorse most heartily is the early involvement of the school attorney in any situation that might lead to a dismissal. It is essential that a qualified school attorney be readily accessible to the administrative staff to help evaluate each situation and to examine the alternatives.

We fully expect this handbook to be as valuable to attorneys as it is to school board members and administrators. The case documentation is in itself a gold mine, for it represents untold hours of research on the part of the authors.

Harold P. Seamon
Executive Director

Illinois Association of School Boards
Springfield, Illinois
March, 1975

Foreword to the 1977 Revised Edition

The courts and the Illinois General Assembly have wrought numerous changes in dismissal procedures since *Formal Dismissal Procedures* was first issued two years ago. This 1977 Revised Edition contains all important changes, including:

1) The new statutory requirement that tenured teachers being dismissed for cause be given a hearing before an impartial hearing officer;
2) State Board of Education rules implementing the above statutory requirement;
3) New court decisions clarifying the rights of probationary teachers with respect to due process hearings;
4) Court decisions clarifying the impact of collective bargaining agreements on teacher dismissal procedures.

This Revised Edition also includes new material related to the recording of teacher evaluation results.

The Illinois Association of School Boards is most grateful to C. D. Kasson and Gerard Dempsey for these 1977 revisions to *Formal Dismissal Procedures*, as well as to the original authors whose excellent work has survived remarkably well.

Harold P. Seamon
Executive Director

Illinois Association of School Boards
Springfield, Illinois
August, 1977

Preface

The termination of a teacher's services is regulated in virtually all respects. The Federal Constitution, state statutes, court decisions, and contractual agreements each impose a set of "controls" on the termination process. Taken together, they weave a complex web of legal procedures requiring the early assistance of the school attorney.

Termination of services should be approached with a positive frame of mind when it appears in the best interests of the school district. However, it also should be approached with deliberation. Prior to any action, a thorough review of all facts must be made to determine whether sufficient causes and charges exist. Further, evidence that is admissible in an administrative hearing before an impartial hearing officer must be compiled in support of the charges (if dismissal of a tenured teacher is sought for "cause").

The charge resulting in dismissal may be clear-cut, such as conviction of a teacher for sexually molesting a student. Under such a condition, the record of the charges resulting in the dismissal is brief and simple. The statement of charges is uncomplicated. The evidence is provided by a certified copy of the indictment or arrest record, a certified copy of the judgment, and perhaps a certified record of the sentencing procedure.

On the other hand, the charges for dismissal may consist of several complicated elements, such as a failure to maintain discipline, to prepare lesson plans, to cooperate with associates, and so on. The statement of charges in such a case is not brief. In contrast to being supported by copies of court records, the charges will rest on numerous detailed records of

observations of such deficiencies by various persons on various dates, the circumstances and conditions when the deficiencies were observed, records of conferences regarding the deficiencies, and so on.

Forms and documents presented in this booklet are designed to meet the requirements of the latter situation. They may easily be revised to serve the case of less complicated charges.

All references in this handbook to statutory sections, unless otherwise indicated, are to *The School Code*, Chapter 122 of *The Illinois Revised Statutes*. All forms and documents are examples designed to serve as guides. They must be revised to conform to the facts of each specific situation, as well as to the decision of the attorney involved as to their legal sufficiency. *The legal sufficiency of such forms and documents has not been litigated.*

It is hoped that this handbook will serve as an aid and ready reference both to attorneys and to school administrators (with the counsel of their attorneys) when teacher dismissals are considered in the day-to-day operation of the schools. It should also help board members prepare for and assess their roles in dismissal proceedings. Emphasis has been placed upon procedure as stated by *The School Code* and the Rules and Regulations Governing the Procedure for the Dismissal of Tenured Teachers (issued by the Illinois State Board of Education) and upon cited Illinois cases and federal decisions bearing on constitutional and other requirements.

The matter of teacher dismissals, however, can change rapidly by virtue of cases being decided by the courts and legisla-

tive enactments and amendments. Great care should be taken not to act upon the basis of information in this handbook without determining whether changes have occurred in the law since this handbook's preparation.

Finally, the following areas of subject matter, among others, are beyond the scope of this handbook and are not treated herein:

1) The determination of the merit and validity of charges for dismissal. Actions by a teacher which would be legally sufficient for dismissal in one situation might not be sufficient in another situation.
2) The application of rules of evidence to hearings conducted by the school board or by the hearing officer where dismissal of a tenured teacher is sought for "cause". (Note that State Board Rule 6.04(2) provides that the hearing officer is the judge of the relevancy and materiality of the evidence offered, and that strict conformity to legal rules of evidence is not necessary.)
3) The laws applicable to administrative review of a school board's or the hearing officer's decision.
4) Procedures which must be followed in dismissing tenured teachers when there is a decrease in the number of teachers employed, when a particular program is discontinued, or when a teacher reaches the retirement age of 65. Such dismissals usually are not complicated and procedures are spelled out in *The School Code*, Sections 24-12 and 24-11, respectively.

1/An overview

What tenure is and is not

Asked to describe teacher tenure laws, many school board members and administrators would answer, "guaranteed lifetime employment". . ."impediment to effective staff development". . ."roadblock to accountability."

Yes, the tenure laws provide Illinois teachers with a measure of job security not available to employees in the private sector or even to most other employees in the public sector. In fact, there is considerable evidence that tenure affords more than job security. Nevertheless, nothing in the statutes or in the court decisions interpreting them necessarily transforms the relatively secure job of a teacher into a guaranteed one.

"Guaranteed lifetime employment" has more often come about because administrators and boards of education have been unsure of the *process* of discharging the unsatisfactory teacher. Or they have had an inadequate system of evaluating the teacher—particularly of recording such evaluations—and therefore have been hesitant to move against the teacher. Boards and administrators frequently blame tenure for what in fact are their own failures in evaluating teachers and in securing qualified teaching staffs. This is widely reflected in the small amounts of time and money allocated to the evaluation of personnel performance in our schools.

For these and similar reasons, the reluctance of administrators and boards to move to dismiss teachers has strengthened the popular notion of tenure as "guaranteed lifetime employment." Hopefully, this handbook will help dispel some of that reluctance by acquainting board members and administrators with the procedures involved and the issues which may arise in the dismissal of both tenured and non-tenured teachers. It is also hoped that the case citations and representative documents will be of aid to all school attorneys.

Essential to any effective educational program is a qualified teaching staff. Students, parents, and taxpayers deserve and

demand competent teachers. Where a board and administration are firmly committed to high academic standards, it invariably becomes necessary from time to time to dismiss the teacher who continues to impede achievement of that goal—even after remedial help and proper warning. It is in this positive context of building and maintaining a qualified, competent teaching staff that the dismissal of teachers is most properly viewed. This handbook is not intended to encourage increased dismissals. Rather, its aim is to insure that necessary dismissals will be accomplished with minimal problems and will be sustained by hearing officers and the courts.

Basically, there are two major elements which must be considered in the discharge of an Illinois teacher. The first is strict adherence to procedural requirements; the second is the existence of demonstrable reasons for discharge which are not arbitrary or capricious. Taken together, these two elements constitute the basis for dismissal.

Three categories of teachers

Sections 24-11 and 24-12 of *The Illinois School Code*, sometimes referred to as the tenure law, set forth the process by which a teacher may achieve contractual continued service. These sections mandate that a board of education follow certain procedures in exercising its power to discharge teachers. These statutory procedures provide varying degrees of protection to three categories of teachers.

The first-year probationary teacher is one who has been employed on a full-time basis (beginning not later than January 1 of the school term) and who is either new to the district or is returning to the district after having resigned or been dismissed. The board must give written notice to such a teacher at least 60 days before the end of the school term as to whether he will be re-employed for the following term. If the board fails to give such notice, the teacher is deemed re-employed.

The final-year probationary teacher usually is one completing the second consecutive term of full-time teaching in the district. Such a teacher will automatically enter upon contractual continued service (tenure) for succeeding school years unless the teacher is given a written notice of dismissal from the board at least 60 days before the close of the school term. The notice

must state the specific reasons for the dismissal. If the teacher has not had one school term of full-time teaching prior to the beginning of the two-year probationary period, the board, at its option, may extend the probationary period for one additional school term.[1] If the board does extend the probationary period to a third year, it must notify the teacher in writing of the extension at least 60 days prior to the end of the school term, state the reasons for the extension, and outline the corrective actions which the teacher should take to satisfactorily complete the probationary period. At the close of the third year of probation, the teacher automatically achieves tenure unless discharged in the same manner as outlined above for second-year teachers.

Teachers in their probationary years are classified as non-tenured teachers. As such, the dismissal procedures outlined above apply only to dismissals effective at the end of the school term. The dismissal of non-tenured teachers during the school year requires a more complicated procedure and raises questions which are discussed in the main portion of this handbook.

A tenured teacher is one who has satisfactorily completed the two or three-year probationary period and has not received a notice of dismissal. Unless he requests that no hearing be scheduled, such a teacher may be dismissed only upon specific charges and after a hearing before a disinterested hearing officer. A notice of dismissal containing the charges on which the dismissal is based must be given to the teacher at least 21 days prior to the hearing and must contain a bill of particulars which further details and supports the charges for dismissal.

Prior to authorizing a dismissal notice, however, the board must determine whether the charges could be remedied by the teacher within a reasonable period of time. If the charges are remedial in nature, the board must give a written warning that states the specific matters which, if not removed, may result in

[1]All footnoted material will be found in section *5/Footnoted Citations*, beginning on page 80.

dismissal. A tenured teacher who then fails to satisfactorily remedy the deficiencies within a reasonable period of time is subject to the dismissal procedures outlined above.

Clearly, the dismissal of any teacher is not something to be approached haphazardly. Failure to adhere strictly to procedural requirements can overturn a dismissal and, at minimum, require the school board to rehire or grant tenure to a teacher who otherwise would not and should not be teaching in the school district.

The role of evaluation

Strict adherence to dismissal procedures, however, is insufficient both from a practical and legal standpoint unless the board discharges a teacher on reasonable, identifiable, and provable grounds. Essential to sound dismissal practices, therefore, are careful, documented evaluation procedures. Meaningful, honest evaluation is necessary to identify the teacher who is deficient and needs help. Accurate documentation is necessary to establish a sufficient record upon which to base a dismissal if remedial help does not raise the teacher's performance to an acceptable level. In this respect, the role of the administration is crucial.

The basis for a teacher dismissal should be firmly established by the administration before it comes to the board for action. The administration should identify potentially deficient teachers as early as possible, so that by observation and guidance such persons may become satisfactory teachers. If the problem with the teacher appears to be a personality conflict, consideration should be given to reassigning the teacher to another location. Where there exists the possibility of personal animosity on the part of the evaluating administrator, an evaluation should be obtained from a clearly unbiased person. In any event, written records narrating events, incidents, dates, times, places, persons or witnesses present, and the substance of discussions, responses, criticisms, defenses, and directions will indicate whether the teacher is overcoming the deficiencies observed in earlier evaluations. If such records are complete and accurate, they will usually sustain the administration's recommendation to the board for dismissal. In addition, they should aid in making the dismissal proceeding

legally sufficient from the earliest notice to the teacher through the hearing, including administrative review and any appeals.

It is recommended that evaluations be in the form of narrative statements, rather than in the form of checklists. A properly prepared evaluation will recite what was seen and heard, and will guide the reader to the conclusion that the teacher was or was not properly discharging his responsibilities, and will thereby avoid the conclusory nature of an evaluation checklist. An example of an evaluation, in narrative form, of a kindergarten teacher is set forth in *Figure 1*. With proper modification, this evaluation form may be used in other circumstances.

As soon as it doubts that a teacher can be developed or restored—and before coming to the board for action—the administration should consult with the school attorney to review all records of the teacher's service in order to determine whether dismissal is possible and to learn what further evidence and records are required. The administration and the attorney should also determine future steps to comply with all legal requirements and to avoid committing acts which might weaken the case. In arriving at its decision to recommend dismissal, the administration should evaluate other circumstances of the teacher, such as duration of service, health, age, date of normal retirement, community relations, personal problems, and other related matters. The administration should also examine board policies, all written agreements with any teachers organization, and other agreements or understandings to determine whether any other requirements must be met in addition to statutory and constitutional requisites.[2]

If a dismissal is made for lawful reasons and in compliance with all required procedures, it is possible that a fully informed teachers organization will not uselessly litigate the dismissal or even participate in a hearing before the board.

The degree to which the reasons for discharge or non-renewal must be made known to a teacher vary with the category of the teacher. For example, a first-year teacher generally is not entitled to any notice of reasons. A tenured teacher, on the other hand, must be informed of the specific reasons and furnished a bill of particulars as to the evidence which supports those reasons. Apart from the degree to which a teacher must

be informed of reasons and other legal requirements, the administration's recommendation and the school board's decision to dismiss any teacher should, as a matter of fairness, practical administration, and responsible governance, be based on educationally sound and documented reasons. Such reasons can only come from careful, accurate, and frequent evaluation. More importantly, of course, proper evaluation will provide a fair and objective basis for improvement of the whole teaching staff.

Finally, by coupling a knowledge of evaluation with a knowledge of dismissal procedures, school board members and administrators will begin to dispel the popular myth of tenure as a "roadblock to accountability" or as "guaranteed lifetime employment." Subsequent sections of this handbook provide more specific information and guidelines on dismissal and nonrenewal procedures.

Figure 1—NARRATIVE EVALUATION

Date

To: (*teacher*)

From: (*evaluator*)

Re: Evaluation and the Improvement of Instruction

Planned discussion for the meeting scheduled 9/22/77 at 3:15 p.m.:

1. evaluation of lesson plans for the week of 9/16/77;
2. evaluation of the class visit on 9/19, from 2:45 to 3:15 p.m. (30 mins.);
3. long-range objectives and long-range plans for achieving District goals and teacher's objectives.

LESSON PLANS

Plans for a section are somewhat more descriptive than previously. However, there is still no evidence of planning for individuals. Furthermore, plans for classroom activities for the morning and afternoon activities are exactly the same. Much improvement is still needed in lesson planning. Examples are presented below.

9-23-75 Tuesday A.M.
Plans for children to go outdoors to look for different leaves. This activity was observed the previous week. This is the third day's activities noted in plans for one week and observed in class the previous week. It would be understandable to have activities planned for that could not be carried on because of diversions according to students' needs and interests; but to do an activity and then plan for this the following week is not acceptable planning.

9-24-75 Wednesday A.M.
Plans for children to assemble together on floor for a period of approximately 1 hour and 25 minutes, from arrival until 10:30 recess. Even if opening activities are delayed to permit an extended free use of materials, the period is still excessive. Also, Cookie Time is included in the named period; however, this activity was observed to take a period of 7 to 8 minutes (include passing time) and children remained seated during Cookie Time.

One story and some songs are named, but in general, plans still show no indication of specific stories, poems, or music selections. Also, there is no indication of followup activity.

more

Figure 1 continued

nor is the purpose for any activity indicated. There is neither an overall thome for a day's activity nor any transition from activity to activity.

These and previous examples indicate a need for improvement in planning and time management.

CLASS VISIT

(The teacher had the group out for recess from 1:50 until 2:45, a period of 55 minutes, after opening the day with a P.E. class held outside until 1:15. Visit was limited to the 2:45-3:15 period.)

A. Classroom Environment

The physical setting was the same as the previous week. There is still no display of student work. The only suitable term for the climate is chaotic; there was no time when the teacher was able to get the attention or participation of the whole group.

B. Teaching Techniques

The story Little, Big, Bigger was read at the beginning of the observation, and after that the teacher jumped from one activity to another stopping one when it got chaotic and starting another. Numerous problems were noted and should be worked on:

1) When the teacher was reading and asking questions, all questions required one-word answers.

2) When children were responding and counting, the teacher kept her eyes on the book.

3) When the teacher was doing the various activities, all geared to total group participation, there were no times when all were participating.

4) Students received no help in concept development. For example, at times "Little, Bigger, Biggest" was accepted and at other times "Little, Big, Bigger" was used. These were not explained or differentiated in any way. Also, when the class was doing the Hokey Pokey, there was no attempt to review left-right, and when numerous children were having difficulty deciding the correct hand or foot, there was no attempt to assist students with concept development.

more

Figure 1 continued

C. Student Management

Vast improvement is needed in behavior management. The group is unresponsive to the teacher's expectations and signals. Some examples follow:

1) During the reading of the story a question came up about the flushing of the toilet. _____ appropriately explained he didn't do this since the toilet wasn't operating the previous day. The teacher asked, "Would you like to flush the toilet?" and _____ responded, "No." This exchange should not have occurred during the reading of the story, and the teacher should have given a directive with explanation rather than a question.

2) At the end of the story, many children were moving about, and the group disbanded without teacher direction. Attempts to get the group back together were ineffective. The teacher played five chords on the piano, but there was no response. Students were directed to stand up and hold hands; there was no explanation for this and when students asked "What are we going to play?" there was no teacher response.

3) After the Hokey Pokey, students were directed to sit; six students left the group. The teacher counted to 3 for students to conform. When there was no response, the teacher took 2 children by the arm and pulled them into the group, leaving the others to roam.

4) Following the sitting and singing of songs, "Farmer in the Dell" was started. Children were leaving the group, and chaotic is the most accurate description this observer can give. The game was stopped after a brief attempt; the explanation given was that it was _____'s idea to play the game and he didn't want to play it anymore. _____ was under the table all this time, and there was no attempt to have him join the group or explain his behavior. When singing was begun, the principal talked with _____ and invited him to sit in a chair in front of hers. _____ did.

5) The closing attempt to get the group together also failed. The teacher said, "Everybody come here," but there was no time when everyone came.

more

Figure 1 continued

The principal reasons for ineffective student management are believed to include: (1) the absence of clearly stated expectations; (2) the absence of teacher directions for pursuing an activity; (3) the persistence of the teacher in using questions like "Would you like to . . . .?" when a purposeful directive is required; (4) the use of signals which seem to be meaningless to students and for which the expectation of student's response appears absent.

RECOMMENDATIONS

1. Question-answer periods should be used as an opportunity to develop receptive and expressive language skills. Directions like "Show me . . . . . " would enable the teacher to learn receptive language levels of students. Questions, like "What is this?" would enable the teacher to learn expressive language levels of students, and students should be expected, in general, to respond with sentences using appropriate syntax.

2. Question-answer periods should be used to identify those children who are not able to respond with the group and need more individualized attention.

3. Clear expectations need to be stated for group participation. When the teacher begins to set a stage for an activity to make this purposeful, some of the deviant be-

more

Figure 1 continued

havior caused by confusion or restlessness may be eliminated. Other deviant behavior needs to have motives explored, and the teacher needs to develop ways to draw everyone into the group.

4. Whatever the concept(s) the teacher is attempting to develop, these should be made clear before the activity begins. It would assist reading readiness to use labels for the concepts; for example, the words could have been printed on the board or on cards or a chart and numerous methods could have been used to assist in concept development (a simple example would be printing the words in ordered sizes:

little, BIG, BIGGER.

The left-right concept should have been reviewed, probably first in a straight line, then any number of methods could have been used to assist children in applying the concepts in the circular game (a single example might be to have the child hold out the right arm and march from a straight line into a circle with the arm extended; then, instead of switching, follow all other body parts on one side, etc.)

Long-range plans for meeting District goals are expected in September, but as yet have not been received or discussed. These should be presented within the next eight days.

2/The tenured teacher

Causes and charges

The Illinois School Code in Section 24-12 specifies that a tenured teacher may only be dismissed for the reasons and causes stated in Section 10-22.4. It further states that charges must be specified and a hearing provided before a disinterested hearing officer unless the teacher requests that no hearing be scheduled. The decision of the hearing officer is final unless reviewed pursuant to the Administrative Review Act (*Illinois Revised Statutes,* Chapter 110, Section 264 et seq.).

Charges may be thought of as specific acts or incidents which establish or support one or more of the causes for dismissal. Causes for dismissal are stated in Section 10-22.4 as incompetency, cruelty, negligence, and immorality. The statute further empowers a board of education to dismiss a teacher for "other sufficient cause" whenever, in the opinion of the board, "the interests of the schools require it," or whenever, in the opinion of the board, the teacher "is not qualified to teach."

Charges for dismissal as required under Section 24-12 must be carefully distinguished from *causes* for dismissal as stated in Section 10-22.4. Charges are brought under the statutory causes for dismissal, but a charge for dismissal which does no more than repeat verbatim one or more of such causes may be insufficient to sustain a dismissal due to a lack of specificity.[3]

An objection by the teacher, however, that the charges for dismissal are not sufficiently specific may be overcome by a more detailed statement of charges and evidence in a bill of particulars.[4] In any event, every effort should be made to state the charges for dismissal as specifically as possible.

The charges for dismissal should rest solely on the conduct of the teacher after the date of employment, unless there were misrepresentations by the teacher during the hiring process.[5]

Remediability

Upon determining that a tenured teacher's performance calls for dismissal, the administration should consult with the school attorney. With his assistance, the administration should prepare and present a complete report and recommendation to the board of education. The report may be delivered in writing as well as orally and should include a recommendation as to whether the charges and reasons for dismissal are remediable or non-remediable.

Based on the administration's report and recommendation, the board must then determine whether, in its opinion, the reasons for dismissal are remediable. Unfortunately, neither the courts, the statutes, nor the decisions of hearing officers to date provide any consistent or helpful guide in making this judgment. The conflicting decisions between the appellate districts, and even within each appellate district, have tended to create confusion.[6] Although the courts have articulated a standard by which to determine whether causes for dismissal are irremediable, for unexplained reasons the courts simply have reached different conclusions in applying that standard to similar factual situations. Some decisions, however, provide useful concepts for arguing that something is or is not remediable. The standard established by the courts is that a cause for dismissal is not remediable where irreparable damage has been done to students, the faculty, or the school itself,[7] and where the damage could not have been corrected even if warnings had been given by the teacher's superiors when they learned of the facts.[8]

It is not clear whether causes for dismissal which were at one time remediable (such as a teacher's failure to control his temper) may, through the simple passage of time, become irremediable (such as "chronic" temper outbursts), so that the notice required for remediable causes is thereby avoided.[9]

The board must make a discretionary judgment in the first instance as to whether the reasons for dismissal are remediable. This decision of the board is reviewed by the hearing officer, who determines whether there has been an abuse of discretion by the board in deciding this question, and whether the weight of the evidence supports the board's decision.[10] The notice to remedy is jurisdictional; that is, if the no-

tice to remedy was not given in an instance where the hearing officer or the court determines it should have been, the dismissal is void.[11]

It has been held that a finding of remediability must have been made in the record of the hearing,[12] but also that the board, by not giving a teacher a warning notice, has inferentially determined that the charges for dismissal are non-remediable.[13] At least one Illinois Appellate Court (Fifth district) has held that:

1) A determination by the board, made prior to the hearing mandated by Section 24-12 of *The School Code*, that the reasons and causes are not remediable is sufficient in the first instance;
2) However, substantial evidence supporting such a conclusion must be submitted at the hearing and must appear in the record, and the record must include the reasons of the board for such finding so the reviewing court may pass judgment on them.[14]

The preferred, if not absolutely necessary, practice is for the board to make a specific determination of record. This should be accomplished initially by a resolution of the board authorizing either a Notice to Remedy or a Notice of Charges and Dismissal and later established by evidence introduced at the hearing.

Because the Notice to Remedy is jurisdictional, it is recommended that a Notice to Remedy always be given (unless the reasons for dismissal are clearly irremediable), even though the teacher must thereupon be allowed a sufficiently reasonable time to correct those causes before a formal motion to dismiss may be made.

Whether the school board, after the teacher has temporarily complied with a Notice to Remedy and then has lapsed into his former conduct, must issue a new Notice to Remedy, is an issue upon which no decision by an Illinois court of review has been found. It is suggested that a new Notice to Remedy need *not* be given if the charge is serious, there is a grave effect upon the educational process, and the length of time during which the teacher has complied is of short duration relative to the period of his defective conduct.

Authorizing a notice

The report and recommendation to the board may be given by the administration in executive session as provided in the *Illinois Open Meetings Act (Illinois Revised Statutes,* Chapter 102, Section 42.) This law, in part, allows the board to hold closed sessions to consider information regarding the dismissal of an employee.[15] However, any final action authorizing either a Notice to Remedy or a Notice of Charges and Dismissal must be taken in public session. The minutes of such public meeting, therefore, must include the resolution or motion authorizing the appropriate notice and should reflect the existence of, though usually not include, the report and recommendation of the administration.

Two practices in this regard appear to be in use. In one practice, the board, after discussion in executive session, returns to a public session and adopts a resolution authorizing the giving of notice to remedy and making public record of the name of the teacher, the deficiencies, etc. In the other practice, the teacher's name, the deficiencies and the notice, etc., are all presented in executive session. The board then returns to public session and without revealing the teacher's name, or perhaps disclosing the teacher's name but not the deficiencies, by motion or resolution authorizes the giving of the appropriate notice to "the teacher as discussed in executive session."

Those who follow the latter procedure apparently feel that anonymity for the teacher is worth the risk of their action being held invalid under the *Illinois Open Meetings Act,* or that in order to protect innocent third parties—such as students who are involved in the teacher's misconduct—it is necessary to preserve anonymity for the teacher. It seems debatable whether the public's "right to know" is fulfilled by the mere knowledge that a teacher has been given a Notice to Remedy or Notice of Dismissal, with nothing more. This latter procedure has not to our knowledge been litigated in a tenured teacher dismissal case and could well be sustained.[16]

On the other hand, the school board may conclude that by the time a formal Notice to Remedy is given, some publicity may motivate a teacher to remedy the deficiencies, or that full disclosure of the teacher's name and deficiencies will justify the

board's decision to dismiss with any teachers organization and with the community.

If the latter practice is followed, it is suggested that minutes of the executive session be made. If publicity would appear to militate against the teacher's remedying the deficiencies, perhaps the latter procedure with its accompanying risks should be used. If the teacher's name is to be made public, the resolution in *Figure 2* is suggested. If the teacher's name is being withheld, the resolution must be modified.

Notice to remedy

A suggested form for a Notice to Remedy authorized by the resolution in *Figure 2* is provided in *Figure 3*.

The Notice to Remedy must originate with the school board[17] and must expressly warn of the consequences of a failure to remedy.[18]

In the Notice to Remedy, of course, the particular matters to be remedied must conform to the specific facts.

The State Board Rules require that the Notice to Remedy, if one is to be given, be served upon the teacher personally, or by certified or registered mail, postage prepaid, at the teacher's last known address (State Board Rules 3.01 and 1.02).

After authorization and service of a Notice to Remedy, the administration must scrutinize the teacher's subsequent performance to determine whether the deficiencies cited in the Notice are being remedied within a reasonable time. In determining what is a reasonable time, causes or reasons for dismissal which can be remedied almost instantly—such as insubordination, use of profane language, or striking students—should be distinguished from causes or reasons which can only be remedied over a longer period of time, perhaps with the assistance and constructive criticism of a supervisor, such as failure to prepare adequate lesson plans or failure to maintain proper discipline. Of course, failure to remedy any and all deficiencies within a reasonable time should cause the administration to recommend dismissal and the board to adopt a motion to dismiss the teacher.

Figure 2—RESOLUTION RE

(*name of teacher*)

Authorizing Notice To Remedy

WHEREAS, this Board of Education has received reports from the administration regarding the teaching performance (*conduct*) of (*name of teacher*), a teacher of this School District;

WHEREAS, this Board herewith finds and determines that such reports state causes, charges, reasons and defects in the teaching performance (*conduct*) of (*name of teacher*), which if not removed are causes, charges, and reasons warranting discharge and dismissal of (*name of teacher*) as a teacher in this School District; and

WHEREAS, this Board herewith finds and determines that the teaching performance (*conduct*) of (*name of teacher*) to date in this District has been unsatisfactory;

NOW, THEREFORE, Be It Resolved by the Board of Education of _____ School District Number_____ , _____ County, Illinois, as follows:

SECTION 1: That the President and Secretary of this Board of Education are hereby authorized and directed to sign and serve or cause to be served, on behalf of this Board of Education, upon (*name of teacher*) a Notice to Remedy substantially in the form of Exhibit A attached hereto and made a part hereof, which notice enumerates causes, charges, reasons, and defects which this Board determines, if not remedied, may result in the discharge and dismissal of (*name of teacher*) as a teacher in this School District.

SECTION 2: This Resolution shall be in full force and effect forthwith upon its adoption.

ADOPTED this____day of _____, 19___, by the following roll call vote:

Ayes:

Nays:

Absent:

_____
President, Board of Education

_____
Secretary, Board of Education

Figure 3—NOTICE TO REMEDY

Name and
address of teacher Date

Dear _____:

You are hereby informed that your performance (*conduct*) as a teacher in this School District is deficient and unsatisfactory in the respects listed on Exhibit A attached hereto and made a part hereof. These deficiencies were discussed with you in the conferences between you and _____, _____ Department Chairman, and _____, Principal, as well as on various other occasions with various members of the administration. You have, of course, received written memoranda from supervisory members of the staff or have had conferences with them bearing upon these deficiencies. (*Such may be enumerated and identified by date or otherwise if it appears desirable or beneficial.*)

This Board of Education informs you that the Board has determined these deficiencies to be causes, charges, reasons, and defects which, if not removed, may result in charges against you and your dismissal as a teacher in this School District. You are hereby instructed to remove and remedy each and every reason, cause, charge, and defect stated on such Exhibit.

In addition to conferences which have been, and may in the future if appropriate be, held from time to time with you by members of the supervisory staff of this School District, please feel free to request the assistance and aid of members of the supervisory staff, as you may wish, to bring about a correction of the deficiencies. It is our hope that these deficiencies will be promptly remedied.

Very truly yours,

BOARD OF EDUCATION OF SCHOOL DISTRICT NO. _____,
_____ COUNTY, ILLINOIS

By: _____
President

By: _____
Secretary

EXHIBIT A

Deficiencies in the teaching (*conduct*) of (*name of teacher*):

1. You fail at the beginning of each class period to ascertain which students are not present and to report absences in the method as instructed by the Principal. You fail to provide the Principal with a daily list of students tardy to each class and a statement of the action taken in each case.
2. You allow students to leave your classes without a special pass on the forms provided for that purpose.
3. You fail to maintain an accurate record of each student's attendance and academic progress, kept in the Grade Book provided for that purpose, and to include therein a key to the symbols used.
4. You permit students to leave a class earlier than the end of the class period.
5. You fail to make written lesson plans at least once a week in advance and fail to submit them to the Department Chairman so that he may make suggestions.
6. *Etc.*

Notice of charges and dismissal

If the administration's recommendation of dismissal is accepted, then it is essential that the school board approve a motion for dismissal containing specific charges. The motion must be approved by a majority vote of all board members (as opposed to merely a majority of those board members present or voting). It is recommended that this action be accomplished by adopting a resolution authorizing a Notice of Charges and Dismissal. It also is recommended that the Notice of Charges and Dismissal be approved by the board and signed by the president and secretary, although it has been held that a Notice of Charges and Dismissal signed and given by the superintendent upon proper authorization by the board is sufficient.[19]

The authority to dismiss a teacher lies solely with the board; the superintendent or other supervisor by his decision and action alone cannot dismiss.[20]

A suggested form of resolution authorizing a Notice of Charges and Dismissal is provided in *Figure 4*.

The State Board Rules require that the teacher be served with the notice of dismissal motion within 48 hours. (State Board Rule 3.02b). The notice must inform the teacher that he has ten days from the date of the motion to request in writing that no hearing be scheduled. (State Board Rule 3.02c). Service of the notice of dismissal motion is to be made upon the teacher personally, *or* by certified or registered mail, postage prepaid, at his last known address. (State Board Rule 1.02). Note that *Figure 4* recommends service by *both* methods, since such will afford simple proof that proper service was made. Failure to comply with the 48-hour time limit should not invalidate the board's decision to dismiss, since Section 24-12 of *The School Code* expressly limits the scope of the State Board Rules to "uniform standards and rules of *procedure*." (Emphasis added.)

According to Section 24-12 of *The School Code*, a Notice of Charges and Dismissal must be in writing, contain the charges for dismissal, contain a bill of particulars, and be served upon the teacher at least 21 days before the hearing date. Such charges must be substantial,[21] and the Notice must inform the teacher of the alleged deficiency with sufficient specificity to enable the teacher to refute the charge.[22] Section 24-12 ex-

Figure 4—RESOLUTION RE

(name of teacher)

Authorizing Notice of Charges and Dismissal

WHEREAS, this Board of Education has received reports and recommendations from members of the administration regarding the teaching performance (*conduct*) of (*name of teacher*), a teacher of this School District;

*WHEREAS, the reports of the members of the administration so received record defects in the teaching performance (*conduct*) of (*name of teacher*), which, if not removed, would be cause for discharge and dismissal of (*name of teacher*) as a teacher in this School District; and

*WHEREAS, this Board finds and determines that (*name of teacher*) has failed to remove or remedy all or some of the aforesaid causes, charges, reasons, and defects after reasonable warning and the teaching performance (*conduct*) of (*name of teacher*) to date in this District has been unsatisfactory;

NOW, THEREFORE, Be It Resolved by the Board of Education of _____ School District Number ____, _____ County, Illinois, as follows:

SECTION 1: That this Board has considered the aforesaid charges, reasons, and defects and the statement thereof in the Notice of Charges and Dismissal being Exhibit A attached hereto and made a part hereof and does adopt such

more

***In the event the charges for dismissal were considered non-remediable, a Notice to Remedy would not have been sent and the second and third "WHEREAS" clauses of the above resolution would be omitted and the following substituted:**

WHEREAS, such reports state defects in the teaching performance (*conduct*) of (*name of teacher*) which this Board of Education hereby finds to be non-remediable and requiring the dismissal of (*name of teacher*).

Figure 4 continued

as charges for the dismissal of (*name of teacher*) as a teacher in this School District.

SECTION 2: That (*name of teacher*) is hereby dismissed as a teacher for and in this School District in conformance with the aforesaid notice, and the effective date of such dismissal is _____

SECTION 3: That the President and Secretary of this Board of Education are hereby authorized and directed to sign, serve or cause to be served, for and on behalf of this Board of Education, on (*name of teacher*) a Notice of Charges and Dismissal substantially in the form of Exhibit A attached hereto and made a part hereof.

SECTION 4: That the President of this Board of Education is authorized and directed to prepare, or cause to be prepared, a Bill of Particulars in conformance with law, and also such other additional notices and documentation as may be necessary in order to effectuate under law the dismissal of (*name of teacher*) as a teacher in this School District.

SECTION 5: That the President of this Board of Education is authorized and directed to serve or cause to be served upon (*name of teacher*) within 48 hours, a true and correct copy of this Resolution, including Exhibit A attached thereto, both by personal service and by certified mail, postage prepaid, addressed to the last address of (*name of teacher*) known to this District.

SECTION 6: This Resolution shall be in full force and effect forthwith upon its adoption.

ADOPTED this _____ day of _____, 19____, by the following roll call vote:

Ayes:

Nays:

Absent:

_____
President, Board of Education

_____
Secretary, Board of Education

pressly requires that the board schedule a hearing on those charges before a disinterested hearing officer not less than 30 nor more than 60 days after the enactment of the motion for dismissal, unless the teacher within ten days requests that no hearing be scheduled. The statute does not require that an effective date of dismissal be specified in a Notice of Charges and Dismissal, and no longer requires that the effective date of a dismissal must be after November 1 and before the close of the school term. In addition, as we discuss later, a teacher may be suspended "pending the hearing" according to Section 24-12.

It is suggested that a date of dismissal be specifically stated in the resolution authorizing the Notice of Charges and Dismissal, or in the Notice itself, and that it generally be the earliest possible date warranted by the circumstances. Thus, if the circumstances warrant the immediate removal of the teacher from the school, the resolution and the Notice should provide that the dismissal is effective immediately, or the teacher should be suspended pending the hearing. If no date of dismissal is specified, the dismissal will become effective on the date of the hearing officer's decision if his decision is that the teacher shall be dismissed. State Board Rule 7.02 provides that the hearing officer's decision should be rendered no later than 30 days from the date of the closing of the hearing.

Figure 5 provides a suggested form of Notice of Charges and Dismissal in which the charges were not remedied after service of a Notice to Remedy.

Charges 1, 2, and 3 in the Notice of Charges and Dismissal (*Figure 5*), when read with the specifications of the Notice to Remedy (*Figure 3*), should be of sufficient specificity to constitute dismissal charges, as distinguished from causes. Charges 4 and 5 in the Notice are stated in the terminology of *causes* for dismissal under Section 10-22.4 and, depending on the circumstances, may also be made sufficiently specific to support dismissal when read in connection with the specifications of the Notice to Remedy. Regardless of whether this is true, the language in charges 4 and 5 may well be included in every Notice of Charges and Dismissal, since these charges may be made more specific by including in the Bill of Particulars defi-

Figure 5—NOTICE OF CHARGES AND DISMISSAL

(where charges were not remedied following a Notice to Remedy)

Date

Name and
address of teacher

Dear _____ :

You are hereby notified that you are dismissed as a teacher in the _____ School District Number _____, _____ County, Illinois, on the basis of the following charges:

1. You have failed to remedy deficiencies which were brought to your attention in the Notice to Remedy served upon you personally on (*date*), mailed to you by certified mail on (*date*), and which delivery of said Notice by certified mail was receipted for by you on (*date*).
2. You are negligent.
3. You have been insubordinate and have failed to follow the instructions of your supervisors and cooperate with them.

more

Figure 5 continued

4. In the opinion of the Board of Education, you are not qualified to teach.

5. In the opinion of the Board of Education, your dismissal is in the best interests of the school.

Unless you, within ten (10) days of the date hereof, request in writing of this Board of Education that no hearing be scheduled, this Board of Education shall schedule a hearing on the aforesaid charges, before a disinterested hearing officer, on a date no less than 30 nor more than 60 days after the date hereof. We suggest that any request that no hearing be scheduled be addressed: Board of Education of School District No. _____, Attn: (*name*), Secretary, Office of the Board of Education, (*street address*), (*city or village*), Illinois (*zip code*).

The effective time and date of your dismissal is immediately preceding the close of the school day on the _____ day of _____, 19___.

Dated this _____ day of _____ 19___.

BOARD OF EDUCATION OF SCHOOL DISTRICT NO. ___,
_____ COUNTY, ILLINOIS

By:_____
President

By:_____
Secretary

ciencies in the teacher's performance or conduct which were omitted from the Notice to Remedy and overlooked in preparing the Notice of Charges and Dismissal.[23] (See earlier discussion for the need to distinguish between causes for dismissal and charges,[24] and for the principle that charges not sufficiently specific in the Notice of Dismissal may be made so in the Bill of Particulars.[25])

Figure 6 provides a suggested form of Notice of Charges and Dismissal in which the charges are considered non-remediable.

Suspension

Suspension of a dismissed teacher while a hearing is pending is permitted by Section 24-12 of *The School Code*,[26] and by State Board Rule 5.01. The teacher is not entitled to pay during the period of suspension if the charges are found to be true.[27] In the event that the charges and dismissal are not sustained by the hearing officer or on appeal, the teacher is entitled to reinstatement and payment for his loss of income and costs incurred. The authors believe that a teacher may also be suspended from the time the teacher is given notice of dismissal until the date upon which the dismissal becomes effective. If the teacher is suspended, the resolution authorizing the Notice of Charges and Dismissal should so provide, and the following sentence or appropriate language should be inserted in the Resolution and the Notice of Charges and Dismissal at an appropriate place:

> In the meantime you (or enter teacher's name) are suspended without pay from all teaching and other duties with this school district.

There appears to be no significant difference between, on the one hand, a suspension without pay which is effective on the date the teacher is given notice of dismissal and, on the other hand, a notice of dismissal which is stated by the board as being effective immediately.

Scheduling a Hearing Date

Where the teacher has not requested in writing, within the statutory ten-day period, that no hearing be scheduled, the board must within ten days after the approval of the motion for

Figure 6 — NOTICE OF CHARGES AND DISMISSAL

(where charges are considered non-remediable)

Date

Name and
address of teacher

Dear _____:

You are hereby notified that you are dismissed as a teacher in _____ School District Number _____, _____ County, Illinois, on the basis of the following charges:

1. You have engaged in strikes against said School District and its Board of Education.

2. Without authorization you have taken equipment belonging to the District from school premises and you have converted it to a use other than school purposes.

Unless you, within ten (10) days of the date hereof, request in writing of this Board of Education that no hearing be scheduled, this Board of Education shall schedule a hearing on the aforesaid charges, before a disinterested hearing officer, on a date no less than 30 nor more than 60 days after the date hereof. We suggest that any request that no hearing be scheduled be addressed: Board of Education of School District Number _____, Attn: (*name*), Secretary, Office of the Board of Education, (*street address*), (*city or village*), Illinois (*zip code*).

The effective date of your dismissal is (*date*).

Dated this _____ day of _____, 19_____.

BOARD OF EDUCATION OF SCHOOL DISTRICT NO._____,
_____ COUNTY, ILLINOIS

By:_____
President

By:_____
Secretary

dismissal schedule a hearing before a disinterested hearing officer. If a hearing is to be scheduled, it must be on a date no less than 30 nor more than 60 days after enactment of the motion to dismiss.

Section 24-12 of *The School Code* requires that the hearing be *scheduled* within the designated time; the statute does not require that the hearing *commence* on the date initially scheduled by the board. Indeed, State Board Rule 3.05 provides that the time and place of the hearing shall be as mutually agreed by the teacher, the board, and the hearing officer. If there is a dispute, the hearing officer fixes the time and place upon request made to the State Board—but the place of hearing must then be within the school district's boundaries.

Within five days after the hearing date is set by the board, the secretary of the board must serve a Notice of Hearing upon the teacher and upon the State Board of Education; the Notice of Hearing sent to the State Board of Education must be accompanied by a certified copy of the board's motion and vote for dismissal. (State Board Rule 3.03b, c).

Selecting a Hearing Officer

The process whereby a disinterested hearing officer is selected is initiated by transmittal of the board's Notice of Hearing to the State Board of Education.

Pursuant to State Board Rule 4.01, all prospective hearing officers in cases where the dismissal of a tenured teacher is sought for "reason or cause" are proposed by the State Board of Education and possess the following qualifications:

1) Are accredited by a national arbitration association (At present there are only two sources for obtaining such arbitrators: the American Arbitration Association and the Federal Mediation and Conciliation Service. Neither of these bodies employs arbitrators; rather, their function is to list arbitrators);
2) Are not, at the time of the hearing, resident in the school district involved in the hearing;
3) Are disinterested and impartial; and
4) Have no financial or personal interest in the result of the hearing.

The fees of the hearing officer are paid by the State Board and may not exceed $250.00 per day.

To successfully handle tenured teacher dismissal cases which involve a hearing before a hearing officer, representatives of the school board (administrator or attorney) should become familiar with the background of and the decisions rendered by the hearing officers listed by the State Board of Education. They will be in a better position to make a meaningful use of the right to strike two names from the list of prospective hearing officers.

Within ten days after receiving the Notice of Hearing from the secretary of the school board, the State Board is to provide the school board and the teacher with a list of five prospective impartial hearing officers. In addition to a list of the names of the prospective hearing officers, the Illinois Office of Education includes brief biographical resumes. Within five days after receipt of the list of prospective hearing officers, first the teacher and then the board alternately strike one name from the list, until only one name remains. That person is the hearing officer. The striking may be accomplished on behalf of the teacher or the board by an authorized agent (administrator or attorney).

Within five days after the hearing officer is designated, the State Board of Education is to be notified. It then mails notice of his appointment to the hearing officer. The hearing officer must sign an acceptance and file it with the State Board within five days of his receipt of the notice of appointment, and at that time must also disclose to the State Board any circumstances which might disqualify him as an impartial hearing officer. The State Board is immediately to disclose such information to the parties. The parties may waive this presumptive disqualification, but in the absence of a waiver by both parties, the State Board is to declare a vacancy, which is to be filled by the same procedure as the original appointment of a hearing officer.

A suggested form of resolution scheduling a hearing date and authorizing the giving of notices is provided in *Figure 7*. A suggested form of a Notice of Hearing to be served on the teacher is provided in *Figure 8* and a suggested form of a Notice of Hearing to be served on the State Board of Education is provided in *Figure 9*.

Figure 7—RESOLUTION RE

(name of teacher)

Scheduling a Hearing Date and Authorizing the Giving of Notices

WHEREAS, this Board of Education has on (*date of Resolution authorizing Notice of Charges and Dismissal*) authorized its President and Secretary to serve on (*name of teacher*) a Notice of Charges and Dismissal; and

WHEREAS, the said Notice of Charges and Dismissal has been served upon the said (*name of teacher*), and (*name of teacher*) was thereupon advised of his right to request in writing within ten (10) days that no hearing be scheduled; and

WHEREAS, the said (*name of teacher*) has not within ten (10) days of (*date of Resolution authorizing Notice of Charges and Dismissal*) requested in writing that no hearing be scheduled;

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of _____ School District Number ____, _____ County, Illinois, as follows:

SECTION 1: That a hearing upon the dismissal of (*name of teacher*) be, and the same hereby is scheduled for (*date not less than 30 nor more than 60 days after the date of the Resolution authorizing Notice of Charges and Dismissal*), at _____, ____M., in the regular meeting room of this Board of Education.

SECTION 2: That the Secretary of the Board of Education is hereby authorized and directed to prepare or cause to be prepared, and to serve or cause to be served, within five (5) days of the date hereof, on (*name of teacher*) a Notice of Hearing substantially in the form of Exhibit A attached hereto and made a part hereof.

SECTION 3: That the Secretary of the Board of Education is hereby authorized and directed to prepare or cause to be prepared, and to serve or cause to be served, within

more

Figure 7 continued

five (5) days of the date hereof, on the Illinois State Board of Education a Notice of Hearing substantially in the form of Exhibit B, attached hereto and made a part hereof, accompanied by a Secretary's certificate, certifying a true and correct copy of this Resolution, and also certifying a true and correct copy of the Board's motion and vote for dismissal of (*name of teacher*).

SECTION 4: That (*school attorney or other qualified person*) is hereby appointed agent and attorney for this School District in connection with the dismissal of (*name of teacher*) and is authorized to proceed with the selection of a hearing officer as provided by law.

SECTION 5: That the President of the Board of Education is hereby authorized and directed to serve or cause to be served on (*name of teacher*) and on the Illinois State Board of Education, respectively, a written Notice of Charges and Dismissal, containing a Bill of Particulars. Such notice containing a Bill of Particulars is to be served not later than 21 days prior to (*hearing date set forth in Section 1*).

SECTION 6: This Resolution shall be in full force and effect forthwith upon its adoption.

ADOPTED this ____ day of _____, 19____, by the following roll call vote:

AYES:

NAYS:

ABSENT:

_____
President, Board of Education

_____
Secretary, Board of Education

Figure 8—NOTICE OF HEARING

(to be served on the teacher)

Name and address of teacher

Date:

Dear _____:

Our law offices represent the Board of Education of School District No. _____, _____ County, Illinois, in connection with dismissal proceedings currently pending against you.

Pursuant to Section 24-12 of the School Code and Section 3.03 of the Rules and Regulations Governing the Procedure for Dismissal of Tenured Teachers in the State of Illinois, the Secretary of the Board of Education of District No. _____, _____ County, Illinois, hereby serves upon you a copy of a Resolution re (*name of teacher*) Scheduling Hearing Date and Authorizing the Giving of Notices, which said Resolution constitutes a Notice of Hearing for _____, 19 ___, at _____.M, in the regular meeting room of the Board of Education.

In conformance with the said Resolution re (*name of teacher*) Scheduling Hearing Date and Authorizing the Giving of Notices, the foregoing letter with enclosures is hereby served by the Secretary of the Board of Education through our law offices as agents and attorneys.

Very truly yours,

(*Name of school attorney*)

Enclosure

Figure 9—NOTICE OF HEARING

(to be served on State Board of Education)

Date

Illinois State Board of Education
(*Address*)

Gentlemen:

Our law offices represent the Board of Education of School District No. _____, _____ County, Illinois, in connection with dismissal proceedings currently pending against (*name of teacher*).

Pursuant to Section 24-12 of the School Code and Section 3.03 of the Rules and Regulations Governing the Procedure for the Dismissal of Tenured Teachers in the State of Illinois, the Secretary of the Board of Education of School District No. _____, _____ County, Illinois, hereby serves upon you a copy of a Resolution re (*name of teacher*) Scheduling Hearing Date and Authorizing the Giving of Notices, which said Resolution constitutes a Notice of Hearing for _____, 19 _____, at _____, _____M., in the regular meeting room of the Board of Education.

Please note that the Notice of Hearing enclosed herewith is accompanied by a certified copy of the Board of Education's motion and vote for dismissal of (*name of teacher*).

In addition, please note that the Board of Education has, in the Resolution re (*name of teacher*) Scheduling Hearing Date and Authorizing the Giving of Notices, authorized our law offices to proceed on behalf of the School District with the selection of a Hearing Officer as provided by law. Therefore, we hereby request that the list of prospective Hearing Officers be sent directly to us.

In conformance with the said Resolution re (*name of teacher*) Scheduling Hearing Date and Authorizing the Giving of Notices, the foregoing letter with enclosures is hereby served by the Secretary of the Board of Education through our law offices as agents and attorneys.

Very truly yours,

(*Name of school attorney*)

Enclosures

Bill of particulars

If the teacher does not request in writing and within the appropriate time that no hearing be scheduled, a Bill of Particulars must be served upon the teacher at least 21 days before the hearing, together with written notice of the charges. If there is a reasonable probability that the teacher will not waive his right to a hearing, it is recommended that a Bill of Particulars be prepared at the same time as the Notice of Charges and Dismissal, or shortly thereafter, because time is short for preparation and delivery. The board president should be directed in the resolution authorizing a Notice of Charges and Dismissal (*Figure 4*) to prepare or cause to be prepared a Bill of Particulars. If a Bill of Particulars is thereafter required, the resolution scheduling a hearing date (*Figure 7*) should authorize the board president to serve the Bill of Particulars or cause it to be served in conformance with law. As stated earlier, an objection by the teacher that the charges for dismissal in the Notice of Charges and Dismissal are insufficient may be overcome by a more detailed statement of charges and evidence in a Bill of Particulars.[28]

The suggested form for a Bill of Particulars in *Figure 10* was prepared on the assumption that the causes for dismissal were remediable; if the causes were non-remediable, some modifications would be necessary. Exhibits 3 through 25 of the Bill are actual copies from the school records of documents recording class visitations, observations, and conferences. If such records are carefully and skillfully made at the time of the visitations, observations, and conferences, the preparation of the Bill of Particulars may be adequately and expeditiously completed and include only specific and detailed incidents provable by known witnesses and as shown in school records.

To the degree that substantive material supporting specific charges is set forth at length in the Bill of Particulars, copies of records and the exhibits indicated in *Figure 10* need not be attached to the Bill of Particulars. In any case, copies of such actual records should not be attached without prior examination and approval by the school attorney.

Whether a tenured teacher is entitled to a list of witnesses is questionable. It has been held by the Fifth Circuit of the U.S.

Figure 10—BILL OF PARTICULARS

Date

Name and
address of teacher

Dear _____ :

Pursuant to Section 24-12 of The School Code and Section 3.04(a) of the Rules and Regulations Governing the Procedure for the Dismissal of Tenured Teachers, you are hereby provided with a Bill of Particulars covering the reasons and causes for your dismissal as a teacher in School District No. ____, _____ County, Illinois.

1. On (*date*) you were personally served with a notice of deficiencies in your teaching (*conduct*) constituting causes and reasons which, if not removed, might result in charges against you and your dismissal, a true and correct copy of said notice being attached hereto and made a part hereof as Exhibit 1, sometimes hereinafter referred to as the Notice to Remedy.

2. You were subsequently served, personally, and by registered mail, with a Notice of Charges and Dismissal dated (*date*) from the Board of Education of this School District, a true and correct copy of said Notice of Charges and Dismissal being attached hereto and made a part hereof as Exhibit 2.

3. Charge 1 in the aforesaid Notice of Charges and Dismissal is stated as follows:

   > "1. You have failed to remedy deficiencies which were brought to your attention in the Notice to Remedy served upon you personally on (*date*), mailed to you by certified mail on (*date*), and which delivery was receipted for by you on (*date*)."

   As to the particulars of this reason, you failed to remedy those deficiencies stated as Items 1, 2, 4, and 5 of Exhibit A to the Notice to Remedy, as evidenced by Exhibits 3 through 12 attached to and made a part of this Bill of Particulars, such Exhibits being (*generally describe, e.g., class visitation reports, records of conferences, etc.*).

4. (*Insert similar information and details for each charge for dismissal as in Paragraph 3 above.*).

more

Figure 10 continued

5. Charges 4 and 5 for your dismissal, as stated in the aforesaid Notice of Charges and Dismissal dated (*date*) and served upon you according to law, are as follows:

> "4. In the opinion of the Board of Education, you are not qualified to teach.
>
> "5. In the opinion of the Board of Education, your dismissal is in the best interests of the school."

The following are the particulars supporting these charges for your dismissal: your judgment in preparing for and conducting classes and maintaining order and discipline and your understanding of the academic subject matter which you have been assigned to teach are so defective that there is no possibility within the foreseeable future that you can provide competent instruction in the classroom in said subject matter, all as evidenced by . . .

> (*Enumerate appropriate documents such as: Conference reports, observation reports and notes, appraisal reports, summary of contact reports, letters, and memoranda*)

covering the period of (*date*) through (*date*), true and correct copies of which are attached hereto and made a part hereof as Exhibits 13 through 25 inclusive.

(*Exhibits 13 through 25 inclusive to the Bill of Particulars should be written records, reports of incidents, class visitations, conferences, observations, etc., establishing notice to the teacher of deficiencies, the failure to remedy causes and deficiencies, etc.*)

BOARD OF EDUCATION OF SCHOOL DISTRICT NO. ____,
_____ COUNTY, ILLINOIS

By: _____
President

By: _____
Secretary

Court of Appeals that a non-tenured teacher, under certain circumstances and by virtue of due process requirements, must be advised of the names of witnesses and the nature of their testimony.[29] Certainly, if a non-tenured teacher is entitled to such rights under the Federal Constitution, the tenured teacher would also be entitled to them.

Role of the collective bargaining agreement

Many school districts have collective bargaining agreements which include sections on evaluation. Such sections typically have the following features:

1) A specified number of evaluations is required annually;
2) Rules are set forth as to when and how long evaluations will be;
3) Provisions are made for post-evaluation follow-up meetings.

In the past arbitrators in grievances under collective bargaining agreements have tended to regard such evaluation procedures as "due process" protections negotiated by the parties, and have sought to require boards of education to complete such evaluation procedures before permitting the boards to make a dismissal. The logic of this approach was twice sustained by the Illinois appellate court, although neither case involved a tenured teacher dismissal.[30] However, the Illinois Supreme Court in 1975 held that the school board has the duty to appoint teachers and to terminate the employment of teachers by dismissal, and that such duties are discretionary powers and may not be delegated.[31] Although the issue is not totally free from doubt, presumably the failure to comply with an evaluation clause will not limit the power of a board of education to dismiss a tenured teacher when the dismissal is handled in compliance with the provisions of *The School Code*.[32]

The tenure dismissal hearing

Tenure dismissal hearings must be considered in light of Section 24-12 of *The School Code*, the State Board Rules, and various pertinent court decisions. Material contained in Chapter 3 of this handbook—The Probationary Teacher—should also be studied in connection with hearings for tenured teachers. The constitutional rights of a tenured teacher would certainly be no less than those of a non-tenured teacher.

Here are some legal considerations regarding the tenure hearing as established by Section 24-12, the State Board Rules, and related court decisions:

1) The hearing must be public at the request of either the teacher or the school board.
2) All testimony must be taken under oath, which must be administered by the hearing officer.
3) A record of the proceedings must be kept by a competent reporter, taking stenographic or stenotype notes of the testimony.
4) The cost of the reporter's services must be paid by the State Board of Education. Either party desiring a transcript of the hearing must pay the full cost of the transcript.
5) The teacher and the school board may each have the hearing officer issue subpoenas requiring attendance of not more than 10 witnesses.
6) The teacher may, as provided in Section 24-12, be present, have counsel, offer evidence and witnesses, cross-examine witnesses, and present defenses against the charges.

The hearing is not a mere formality but is a substantial right and should be fair in all respects.[33] At the hearing the hearing officer hears all evidence and decides whether such evidence sustains the board's decision to dismiss. Where applicable, the hearing officer should also reaffirm or reverse the board's initial determination that the charges for dismissal were non-remediable. If the board initially found the charges were not remediable and at the hearing failed to prove by substantial evidence that the causes upon which the charges were based were not remediable, the hearing officer would no doubt invalidate the dismissal, since failure to give a notice to remedy is essential where charges are remediable.[34]

Procedure under the State Board Rules

In fulfillment of its duty to "promulgate uniform standards and rules of procedure" for tenure dismissal hearings, the Illinois State Board of Education has issued rules and regulations which regulate, among other things, the hearing and the decision. (A copy of the State Board Rules is set forth in the Appendix beginning on page 96.) Under the State Board Rules, the hearing is to be conducted in the following manner:

1) Although the hearing is open to the public at the request of either the board or the teacher, the hearing officer must exclude witnesses (during the testimony of other witnesses) if either party so requests.

2) Each party may be present and represented by counsel or other authorized representative.

3) The State Board Rules do not permit a hearing officer to sustain the board's decision of dismissal *solely* on the default or absence of the teacher. The school board is required to submit such evidence as the hearing officer may require in order to understand and determine the dispute, including proof of due notice. The hearing may, however, proceed despite the absence of either party who, after due notice, fails to attend or to obtain a continuance.

4) The hearing opens with the hearing officer recording the place, time and date of the hearing, his presence, and those of the parties and their counsel.

5) The parties then may introduce any stipulations as to the facts, and make any pre-hearing motions before opening statements are made.

6) After opening statements, the board is first to present its evidence. The teacher may, of course, confront the witnesses, and may offer his own evidence and present a defense. (The hearing officer may permit the teacher to proceed first in the hearing, but must, of course, afford a full and equal opportunity to all parties to present relevant proofs.)

7) The hearing officer is the judge of the relevancy and materiality of the evidence offered, and may receive exhibits in evidence. He may direct the parties to produce such additional evidence as he may deem necessary to an understanding and

determination of the dispute. Strict conformity to the legal rules of evidence is not required.

8) The parties are permitted to make objections to the offered evidence; the hearing officer has the power to rule on the objections, including the power to exclude evidence. He must, however, note the objections in the record, and must also allow offers of proof to be made.

9) Hostile witnesses may be examined as if under cross-examination.

10) The hearing officer is to include in the record the names and addresses of all witnesses, and the exhibits in the order received.

11) At the close of the hearing, each party may make a closing statement as to the facts and the law. The hearing officer has the power to direct that the closing statements be written.

12) Before closing the hearing, the hearing officer inquires whether any party has further proofs or witnesses; upon receiving negative replies, he declares the hearing closed, and a minute thereof is recorded.

13) For good cause, the hearing officer may continue the hearing at the request of either party, or upon his own initiative. He must adjourn when the parties so agree.

It should be noted that the State Board Rules provide for automatic waiver of certain violations of the Rules. Where, prior to the hearing, a party has failed to comply with the Rules, and the other party knows of the non-compliance but does not make written objection to the State Board or the hearing officer, and merely proceeds with the hearing, such party's right to object is waived. (State Board Rule 8.01.)

Decision of hearing officer and appeal

Not later than 30 days from the close of the hearing, the hearing officer is to make a decision in writing, including findings of fact, whether the teacher shall be dismissed. A dismissal of a teacher must include specific findings as to the reason for dismissal, and failure of the administrative agency to do so will result in a remand that such findings may be made.[35] The

hearing officer's decision is sent to the State Board for transmittal to the parties.

The hearing officer's decision is final unless reviewed under the Administrative Review Act.[36]

If neither party appeals, any party desiring a hearing transcript must pay the cost thereof. If either party appeals, the school board must pay the cost of preparing and filing the record, which includes:

1) All pleadings and exhibits;
2) A statement of matters officially noticed;
3) A transcript of the hearing; and
4) The hearing officer's decision.

Non-teaching certificated personnel

The procedure for dismissal of tenured teachers also applies to superintendents and principals who have not waived their tenure rights by entering into a multi-year contract[37] and to tenured certified personnel other than classroom teachers.

Section 24-11 of *The School Code* defines "teacher," for purposes of determining the applicability of the tenure laws, to include all school district employees regularly required to be certified under laws relating to the certification of teachers.[38] Thus, superintendents, principals, and such certified personnel as counselors, deans, and social workers, may acquire tenure as certified employees of the school district. Cases have dealt specifically with superintendents[39] and principals[40] having tenure, and hold that such tenure is not as a superintendent or a principal but in a teaching position for which the person is qualified. Of course, a superintendent or a principal, by accepting a multi-year contract (under *The School Code*, Sections 10-23.8 and 10-23.8a, respectively) waives all tenure rights for the duration of his employment under that contract. No other school personnel, however, have this option of a multi-year contract.

Tenure and transfer

The tenure laws do not restrict the power of the school board to transfer a tenured teacher to a position which the teacher is qualified to fill or to make appropriate salary adjustments. Thus, a teacher does not acquire tenure in a particular position, such

as in a given subject area, in a particular building, as a counselor or dean of students, or at a particular salary. A teacher may be transferred to another position and given a reduced salary. However, unless salary adjustments are uniform or based on a reasonable classification,[41] any tenured or non-tenured teacher whose salary is reduced is entitled to a notice and a hearing of the type required in tenure dismissals.[42]

The courts will not approve the elimination of a position, a transfer, or reduction of salary where the real motive is to remove the employee from his position without justification.[43] Any such action must not be in the nature of chicanery or subterfuge designed to get around the teacher tenure laws.[44] A teacher who has been reassigned with a substantial salary reduction—a tenured principal who is transferred to a teaching position, for example— may claim that the action was motivated by impermissible factors, such as retaliation for the administrator's exercise of free speech rights or union activities. Therefore, any reassignment or reduction of salary should be based upon documented facts showing a reasonable basis for the board's action, such as a change in curriculum, a reduction in the number of classes in a subject matter, a decrease in enrollment, reorganization of methods of teaching, or the inability of the teacher to perform duties in the present position.

3/The probationary teacher

The Final Year of Probation

During the final year of a teacher's probationary period, the term "non-renewal" means about the same thing as "dismissal effective at the end of the school term."

Stating the reasons

In the dismissal of a final-year probationary teacher effective at the end of the school term, Section 24-11 of *The School Code* requires the board of education to provide the teacher with a statement of reasons for the dismissal. The reasons for dismissal should fall within the parameters of the causes for dismissal stated in Section 10-22.4, but should be distinguished from them since a mere verbatim repeating of the statutory causes is probably not a sufficient statement of reasons. The reasons for dismissal of a final-year probationary teacher are similar to the charges for dismissal given to a tenured teacher in that they must be sufficiently specific to allow the teacher to refute them.[45] It appears that the reasons for dismissal of a final-year probationary teacher need not be of the gravity of those for dismissal of a tenured teacher.[46] However, great care should be taken to state the reasons for dismissal with sufficient specificity, because there normally is no hearing or bill of particulars in which the board may cure an insufficient statement of reasons.

Failure to provide a proper statement of specific reasons for dismissal usually invalidates the whole dismissal process and may result in the final-year probationary teacher achieving tenure status.[47] Moreover, the stated reasons for dismissal may

raise issues of constitutional due process. Therefore, the administration should consult with the school attorney in determining and stating the reasons for dismissal of a final-year probationary teacher.

Recommendation and decision

The administration should present a complete report and recommendation to the board as to any final-year probationary teacher who, in the judgment of the administration, should be dismissed effective at the end of the school term. It is suggested that the report and recommendation of the administration be given in executive session, as permitted under the *Illinois Open Meetings Act*[48], rather than at a public meeting. The executive session avoids circumstances under which the final-year probationary teacher may become entitled, under the 14th Amendment to the *U.S. Constitution,* to a hearing before the board, as is more fully discussed later. The board of education should then in a public meeting make its decision whether to dismiss the teacher.

On pages 25 and 26 of this handbook there is a discussion of two practices followed by boards in authorizing a Notice to Remedy to a tenured teacher. Under the first practice, the full information and facts are made a part of the public record at a public session, usually held following an executive session. Under the second practice, the specifics of the teacher's name, the deficiencies involved, and so on are revealed only in executive session.

Either of the two practices may be applied to the procedures in dismissing a final-year probationary teacher. However, if the deficiencies or reasons for dismissal are made a part of the public record, the likelihood is increased that the teacher may become constitutionally entitled to a hearing before the board. Here is what the United States Supreme Court stated in *Bishop v. Wood,* where the asserted reasons for the dismissal decision were communicated orally to the dismissed employee *in private*[49]:

> Since the . . . communication was not made public, it cannot properly form the basis for a claim that . . . (the dismissed employee's) interest in his "good name, reputation, honesty, or integrity" was thereby impaired.

The resolution in *Figure 11* is designed for adoption at a public meeting. In the event the second procedure is used, this resolution should be modified to eliminate the reasons for discharge, or whatever else is not to be made public. It is recommended that at a minimum the teacher's name be made public.[50] The full information and facts should, in any event, be preserved in the minutes of the executive session.

Notice of reasons and dismissal

As with a Notice of Charges and Dismissal given to a tenured teacher, it is recommended that a Notice of Reasons and Dismissal given to a final-year probationary teacher be approved by the board and signed by the president and secretary, although a Notice signed and given by the superintendent upon proper authorization by the board is sufficient.[51] The superintendent (or any other supervisor) may not by his action alone dismiss a final-year probationary teacher; the authority to dismiss any teacher lies solely with the board.[52]

Statutory requirements are that the Notice of Reasons and Dismissal must:

1) Be in writing;
2) State specific reasons for dismissal, although it appears that facts to support such reasons need not be given and that the teacher is not entitled to challenge the accuracy of the reasons.[53]
3) Be "given" to the final-year probationary teacher by registered mail by the employing board at least 60 days before the end of the school term. The effective date of dismissal is the end of the school term.

A suggested form of Notice of Reasons and Dismissal is provided in *Figure 12*.

Remediability

The distinction between remediable and non-remediable causes for dismissal is stated in Section 24-12 of *The School Code*. It is not applicable to the dismissal of a final-year probationary teacher, which is covered under Section 24-11. Therefore, no Notice to Remedy need be given.

Figure 11—RESOLUTION RE

(Name of Teacher)

Authorizing Notice of Reasons and Dismissal

WHEREAS, this Board of Education has received the reports and recommendations from members of the administration regarding the (*teaching performance or conduct*) of (*name of teacher*), a teacher of this School District; and

WHEREAS, the reports of the members of the administration so received indicate that (*name of teacher*) should be dismissed as a teacher in this School District based upon the reasons indicated in Exhibit 1 attached hereto and made a part hereof, as supported by the reports of the members of the administration; and

WHEREAS, this Board of Education finds and determines that (*name of teacher*) should be dismissed from teaching in this School District at the end of the present school term;

NOW, THEREFORE, Be It Resolved by the Board of Education of _____ School District Number _____, _____ County, Illinois, as follows:

SECTION 1: That (*name of teacher*) is hereby dismissed as a teacher for and in this School District in conformance with the terms and for the reasons set forth in the Notice which is attached hereto and made a part hereof as Exhibit 1.

SECTION 2: That the President and Secretary of this Board of Education are hereby authorized and directed to give to (*name of teacher*) a written notice of this Board's decision to dismiss said teacher at the end of the present school term, which notice shall be substantially in the form of Exhibit 1 attached hereto and made a part hereof.

SECTION 3: This Resolution shall be in full force and effect forthwith upon its adoption.

ADOPTED this _____ day of _____, 19_____, by the following roll call vote:

Ayes:

Nays:

Absent:

_____
President, Board of Education

_____
Secretary, Board of Education

Figure 12—NOTICE OF REASONS AND DISMISSAL

Date

Name and
address of teacher

Dear _____ :

You are hereby notified that the Board of Education of _____ School District Number_____, _____ County, Illinois, has decided (*unanimously*) to, and does hereby, dismiss you from your duties as a teacher in this School District and terminate your services and contract as a teacher in this School District effective (*date*) which is the last day of the present school term.

The reasons for this action of the Board of Education are as follows:

(List reasons)

Very truly yours,

BOARD OF EDUCATION OF SCHOOL DISTRICT NO. _____, _____ COUNTY, ILLINOIS

By: _____
President

By: _____
Secretary

Role of the collective bargaining agreement

An evaluation clause in the board's collective bargaining agreement does not limit the board's power to dismiss a final-year probationary teacher. See the discussion on page 47.

No statutory hearing requirements

Section 24-11 does not require that the board of education offer a hearing at which the final-year probationary teacher can respond to the reasons for dismissal. Thus, giving of Notice fulfills compliance with the statutory requirements and should end the matter with regard to purely statutory requirements.

Constitutional considerations

Increasingly, however, the final-year probationary teacher's right to a hearing before dismissal has become an issue because of constitutional due process considerations. Due process requires that when the state or its agencies seek to terminate an individual's substantial interest in "liberty" or "property," notice and an opportunity for an appropriate hearing must be provided before the termination becomes effective.[54]

Two important U.S. Supreme Court cases, *Board of Regents v. Roth*[55] and *Perry v. Sindermann*,[56] indicate that a final-year probationary teacher's due process rights are not automatically implicated by his dismissal. However, action of the school district, including the giving of the Notice of Reasons and Dismissal, can possibly deprive such a teacher of "liberty" or "property." Thus, a board of education which has decided to dismiss a final-year probationary teacher must also decide the difficult question of whether the statement of reasons for dismissal required by *The School Code* results in a teacher being deprived of "liberty" or "property." If the answer to this question is "Yes," the teacher is constitutionally entitled to a hearing.

The meaning of the words "property" and "liberty" have not been defined with exactness. In both the *Roth* and *Sindermann* cases the U.S. Supreme Court has suggested that the word "property" denotes a broad range of interests secured by existing rules or understandings which may be invoked by the

teacher at a hearing to support his claims of entitlement to such interests. "Property interests" are not created by the U.S. Constitution; rather they are created and their dimensions are defined by independent sources, such as state law or a contract. Deprivation of "property" may result from actions which arbitrarily undermine the rules or understandings that secure the teacher certain benefits—such as continued employment.

The U.S. Seventh Circuit Court of Appeals, in *Hostrop*,[57] has held that one is deprived of "property" if the government extinguishes his legitimate claim to entitlement to his job, such as by terminating an employment contract during its term.

Although a lower federal court found Illinois law too unclear as to whether a final-year probationary teacher has a "property interest" sufficient to require a due process hearing before dismissal, the Seventh Circuit Court of Appeals has held that as a matter of state law the final-year probationary teacher's claim of entitlement to his position is not a "property interest."[58] The statutory requirement that a final-year probationary teacher be given reasons for the dismissal does not create a "property interest."[59] Nor, as the Illinois Supreme Court has held, does an evaluation clause in a collective bargaining agreement create a "property interest" in a non-tenured teacher sufficient to require a due process hearing.[60] The fact that the legislature has imposed procedural restrictions upon the board's exercise of its power to dismiss does not determine that a "property interest" exists.[61]

Thus, both the Seventh Circuit Court of Appeals and the Illinois appellate court have held that a final-year probationary teacher who receives a "notice of non-renewal" before completion of his second year of teaching has no contractual entitlement to further employment and, thus, no due process right to a hearing.[62]

In the *Roth* and *Sindermann* cases, the U.S. Supreme Court has also suggested that deprivation of "liberty" may result from action which adversely affects the teacher's good name, reputation, honor, or integrity, or which imposes on him a stigma making it difficult to obtain another job. Thus, for example, charges of fraud or dishonesty affect the discharged employee's "liberty interest."[63]

The Seventh Circuit Court of Appeals explained that the con-

cept of "liberty" recognizes two particular interests of a public employee: the protection of his good name, honor, and integrity, and the protection of his freedom to take advantage of other employment opportunities.[64] The Seventh Circuit held in *Hostrop*[65] that one is deprived of "liberty" if governmental action damages his standing in the community by charging him with unsavory conduct, such as dishonesty or immorality.

It is clear, under the decisions of federal courts covering Illinois, that a school board's list of reasons for the dismissal of a final-year probationary teacher does not result in a deprivation of the teacher's "liberty" merely because such reasons have a negative effect upon his ability to obtain employment in the future. Nor does the fact that non-retention has unquestionably made the teacher less attractive to other employers amount to a deprivation of "liberty." Similarly, allegations of improper or inadequate performance do not constitute a deprivation of "liberty."[66] Moreover, according to the United States Supreme Court, the fact that the reasons given for the discharge are *false*:

> . . . neither enhances nor diminishes. . . (the discharged employee's) claim that his constitutionally protected interest in liberty has been impaired.[67]

Future court decisions will undoubtedly further clarify the meaning of "liberty" and "property" in the context of teacher dismissals. But until the law has been more fully clarified, the board of education does not appear to be required to provide the final-year probationary teacher an opportunity for a hearing, so long as it is clear that the dismissal will not deprive the teacher of "liberty" or "property" under any reasonable definition.

Due process notice rights

The granting of a hearing in such instances, however, raises questions as to the type of notice and the nature of the hearing to be provided the final-year probationary teacher.

The type of notice of reasons for dismissal required where dismissal deprives the final-year probationary teacher of "liberty" or "property" is suggested by two decisions of the Seventh Circuit Court of Appeals.[68] In those decisions, the court held

that due process requires that a non-tenured teacher be advised of the cause or causes for his dismissal in sufficient detail to fairly enable him to show (in the subsequent hearing)[69] any error that may exist.[70] The due process notice required by these decisions parallels the notice mandated by Section 24-11 of *The School Code*. While these decisions were not sustained by the U.S. Supreme Court, since it found no violation of due process rights, the decisions are in accord with general principles of due process. These decisions should be pertinent where a dismissal deprives a final-year probationary teacher of "liberty" or "property." Moreover, the Seventh Circuit held in *Hostrop* that the board of education must give notice of the evidence upon which the charges are based, as well as notice of the charges.[71]

Likewise, the Fifth Circuit Court of Appeals has held that minimum due process requires that, in addition to a statement of the causes for dismissal, a non-tenured teacher be advised of the names of the witnesses against him.[72]

Whether the requirements of procedural due process entitle the final-year probationary teacher, who otherwise has a right to a due process hearing, to *affirmative notice* of a hearing at which he can respond to the stated reasons for dismissal has not been conclusively determined. There are statements in two decisions of the Seventh Circuit which appear to support the existence of such a requirement;[73] however, in a recent decision the Seventh Circuit failed to comment upon the board's failure to give such affirmative notice to the dismissed teacher.[74] It appears that a dismissed teacher is subject to the doctrine that he has knowledge of the law and his right to a hearing. Thus, if a hearing is not demanded, the right is waived.

Whether due process requires a board of education to advise the final-year probationary teacher that he has a right to counsel at the hearing,[75] does not appear to have been squarely determined. The teacher in *McDonough v. Kelly*[76] questioned the adequacy of the notice of hearing in part on the ground that it failed to inform him of such right. The court rejected the teacher's position, however, holding that the teacher expressly and knowingly waived his right to counsel.

From these cases, then, where dismissal deprives the final

year probationary teacher of "liberty" or "property," it appears that the Notice of Reasons and Dismissal should include, at minimum: the specific reasons for the dismissal; the evidence which establishes the reasons; and perhaps a notice of a hearing at which the teacher may respond to the stated reasons, or a statement that if a hearing is demanded it will be granted. Additionally, the notice of dismissal should be given sufficiently in advance of the hearing, if one is scheduled by the board without demand being made, to allow the teacher a fair opportunity to prepare a response to the notice and present it at the hearing.[77]

Due process hearing procedures

In regard to the nature and form of the hearing where a dismissal deprives a public employee of "liberty" or "property," the U.S. Supreme Court has stated that the very nature of due process makes impossible any concept of rigid procedures applicable to every imaginable situation.[78] Whether the U.S. Constitution requires that a particular right be conferred in a specific proceeding depends upon a complexity of factors. The nature of the alleged right involved, the nature of the proceeding, and the possible burden on that proceeding, all are considerations which must be taken into account.[79] Thus, a weighing process is important in determining the form of hearing required by procedural due process in particular situations.[80]

It is possible to assemble from various court cases a composite picture indicating the kind of hearing which should be accorded the final-year probationary teacher whenever "liberty" or "property" may be deprived by dismissal.

The Seventh Circuit Court of Appeals has implied that the president of a junior college was constitutionally entitled to be represented by counsel at a hearing on his dismissal.[81] Moreover, the order of the District Court in *Roth v. Board of Regents* clearly implied the existence of a right to counsel.[82] The Seventh Circuit has also decided that the same junior college president was constitutionally entitled to present witnesses and to confront adverse evidence.[83] However, the Seventh Circuit has indicated that the U.S. Constitution permits the burden of going forward and the burden of proof to be placed on the final-year probationary teacher.[84] Only if the teacher at the hearing

makes a reasonable showing that the stated reasons for dismissal are wholly without basis in fact would the school administration become obligated to show that the reasons have a basis in fact.[85]

The hearing tribunal

A basic requirement of due process is a fair trial before a fair tribunal. This rule applies both to courts and to administrative agencies which adjudicate.[86] Thus, where the probability of actual bias on the part of the prospective decisionmaker is too high to be constitutionally tolerable, the prospective decisionmaker is disqualified. Among such cases are those in which the adjudicator has a pecuniary interest in the outcome[87] and those in which the adjudicator has been the target of personal abuse or criticism from the party before him.[88]

Where a board employee performed the actual investigation and gathering of evidence in a case, and an attorney independent of the board presented the evidence to the board at an investigative proceeding which was closed to the public, the U.S. Supreme Court stated that the board's mere exposure to evidence presented in non-adversary investigative procedures was insufficient in itself to impugn the fairness of the board members at a later adversary hearing.[89] The Court also noted that it is very typical for the members of administrative agencies to receive the results of investigations, to approve the filing of charges or formal complaints instituting enforcement proceedings, and then to participate in the ensuing hearings, and stated that this mode of procedure does not violate due process of law.

In the *Hortonville* case,[90] the U.S. Supreme Court faced the contention that due process prohibits a board of education from dismissing teachers who had engaged in an illegal strike. The teachers contended that the board was not an impartial decision maker. The Supreme Court responded that:

> Mere familiarity with the facts of a case gained by an agency in the performance of its statutory role does not, however, disqualify a decision maker. (*citing cases*) Nor is a decisionmaker disqualified simply because he has taken a position, even in public, on a policy issue related to the dispute, in the absence of a showing that he is not "capable of judging a particular controversy fairly on the basis of its own circumstances."

The Supreme Court then concluded that due process does not require that the decision to terminate a teacher's employment be made or reviewed by a body other than the school board.

The Illinois Appellate Court has held that, absent facts demonstrating that a board of education's prehearing involvement foreclosed a fair consideration of the evidence presented at the dismissal hearing, it is not a violation of due process for the board to conduct the dismissal hearing.[91] The Seventh Circuit Court of Appeals has also stated that holding a teacher dismissal hearing before the school board is ordinarily adequate.[92] However, the Illinois Appellate Court has also criticized the procedure where the board presides at a dismissal hearing.[93]

The attorneys

It is advisable, if not essential, for two attorneys to participate in the hearing—one to advise the board and one to present the evidence against the teacher. A court has held that the regular attorney for the board may appear as an advocate at a hearing in a teacher discharge proceeding, but that *he should not participate in the board's deliberations and decision on the dismissal.*[94] It is suggested, therefore, that an attorney other than the regular school attorney be retained to advise the board during the hearing and in making its decision.

In order to insure a fair and orderly hearing, the second attorney's major duty is to advise the board on such procedural matters as attorneys filing appearances, making opening statements, presenting charges and evidence, and examining witnesses. This attorney also will be of great assistance to the board as it rules on objections, issues subpoenas, and makes other determinations in the course of the hearing.

At the close of the hearing, this attorney's major duty is to advise and assist the board in such matters as summarizing the evidence, making findings of fact, excluding improper evidence from consideration, and weighing the evidence to determine if the charges have been proven. He also helps prepare a memorandum opinion stating what was considered by the board in reaching its decision, findings of fact, and the conclusions and decisions of the board. A memorandum opinion facilitates defense of the board's decision on review. In assisting the board,

of course, the attorney must be careful not to substitute his judgment for that of the board.

The regular school attorney should present the case for dismissal of the teacher at the hearing. In effect, the regular school attorney represents the administrative staff which recommended the dismissal. His role should be to examine evidence prior to the hearing, make necessary investigations, marshal the evidence and present it, prepare all witnesses in advance of testifying, cross-examine the teacher's witnesses, and make timely objections in the proceeding.

The role of the two attorneys may be reversed—with the regular school attorney advising the board during the hearing and another attorney engaged to present the case for dismissal. In this case, however, questions may be raised as to fairness if the regular school attorney assisted in preparation of the notice of dismissal, notice of the evidence supporting the charges, etc.

The functions of the teacher's attorney, of course, parallel those of the attorney for the administrative staff.

The school board's role

There are at least two major reasons why participants in the hearing should have a full understanding of their particular roles and why they should perform no others. First, unless the roles are fully understood, and particularly the role of the board of education, substantial damage may be done to the morale of the administrative and supervisory staff and the working relationship between them and the board. Second, if roles are violated, serious error may occur in the proceedings and lead to a court reversal of the board's decision to dismiss the teacher.[95]

The relationship of the board and the administrative staff may be substantially injured unless the administrative staff understands that the board is *not* an advocate for the administrative staff to sustain the discharge of the teacher, and that it is *not* the board's duty to support the administrative staff's recommendation in disregard of the facts as the board sees them. There are many restrictions on the board in teacher dismissal proceedings. The board is not performing an administrative function, but a quasi-judicial one in which the administrative agency (the board) does not support one party (the administra-

tive staff) against the other (the teacher).[96] The board must base its decision solely upon evidence presented at the hearing.[97] It may not base its decision on facts communicated to it by the administrative staff outside of the hearing or on past relationships or activities of the teacher except as may be established by evidence during the hearing. Even though the board initially authorized the dismissal of the teacher, the board must be objective at the hearing and in its decision. Courts caution the board in this regard because of the board's multiple role in the dismissal procedure.[98]

The Seventh Circuit Court of Appeals has not ruled definitively on whether the board of education's decision must rest solely on the legal rules and evidence offered as proof at the hearing. However, the same court has stated that a board's reliance upon hearsay evidence is permissible where the evidence was not so untrustworthy as to make action based upon it capricious.[99] Other federal courts have stated that the board's decision may not rest on evidence of which the teacher was ignorant or to which he had no fair opportunity to respond.[100] In *McDonough v. Kelly*,[101] the court held that there was a fundamental denial of due process when a board member who had not been present at the hearing cast the deciding vote after discussing the teacher's case at length with the superintendent and other administrative members, but not with the teacher.

The Seventh Circuit has ruled that if the final-year probationary teacher is not entitled to due process rights upon his dismissal and is not dismissed for constitutionally impermissible reasons, the board of education's decision to dismiss may be based on a reason which is arbitrary or capricious.[102] The First Circuit Court of Appeals has reached a contrary result and stated that a reason for dismissal may be ruled arbitrary or capricious if:

- It is unrelated to the educational process or to working relationships;
- It is trivial and does not justify the ultimate sanction of dismissal;
- It is wholly unsupported by uncontested facts either in the statement of reasons for dismissal or in the teacher's file.[103]

This does not, however, prevent the board from basing its decision upon the teacher's failure to meet imprecise, though nonetheless valid, standards of competence.[104]

Whether due process requires that a transcript of the hearing be made is an open question. The dictum of the court in *Ferguson v. Thomas*[105] indicates approval of this practice. In *Pyle v. Washington County School Board*[106] the absence of an official reporter at the hearing was held not to be a jurisdictional defect. Likewise, whether due process requires the board of education to make written findings of fact and conclusions of law is undecided. The U.S. Supreme Court in *Goldberg v. Kelly*,[107] a case involving the procedures necessary in terminating welfare benefits, has stated that making written findings of fact and conclusions of law are essential to demonstrate that the decision rested solely on the legal rules and evidence offered at the hearing.

Obviously, the requirements for the notice of dismissal and a hearing are not tightly drawn where "liberty" or "property" rights are endangered by the dismissal of a final-year probationary teacher.

It is recommended that the requirements of due process be construed liberally in regard to both the notice and the hearing until the courts or statutes have provided greater clarification.

After the hearing

Upon completion of a hearing in which the initial decision of the board to dismiss the teacher is sustained, it is suggested that the board adopt a resolution that:

1) approves the dismissal;
2) states the effective date of dismissal;
3) sets forth findings of fact.

If it would appear to help on appeal in court, a memorandum opinion may be authorized in the resolution and attached thereto. The memorandum opinion may, among other things, set forth the charges for dismissal, the facts surrounding the dismissal, a summary of the evidence submitted, a statement of any evidence submitted but disregarded in arriving at the decision (such as hearsay or other improper evidence), and a state-

ment of findings of fact and conclusions of law. If the memorandum opinion is used, the findings of fact portion of the resolution would, of course, be omitted, because such findings would be included in the memorandum.

Both the resolution and the memorandum opinion should be prepared by the attorney who advised the board during the hearing and not by the attorney who prosecuted the dismissal.

Extending the probationary period

A cautionary note on the extension of the probationary period to a third year as it may pertain to dismissal is appropriate. Section 24-11 of *The School Code* provides that a board of education at its option may extend to a third year the probationary period of any teacher who has not had one school term of full-time teaching experience prior to beginning the two-year probationary period. Formerly, all that was required to extend the period an additional year was a written notice of the extension from the board, served by registered mail at least 60 days prior to the close of the second term. However, Section 24-11 has been amended to require that reasons for the extension of the probationary period and an outline of corrective actions which should be taken to satisfactorily complete the probationary period must also be given to the teacher. In the absence of any clarification in case law, this requirement could bear on the subsequent dismissal of a teacher who failed to satisfactorily complete the extended probationary period. For this reason, considerable care should be exercised in preparing the statement of reasons and outline of corrective actions in order to avoid prejudicing any subsequent dismissal proceedings.

As noted in the Overview in Chapter 1, the probationary period may be extended for the optional third year only if the board has exercised its discretion according to the merits of the individual teacher's case.[108]

The First Year of Probation

Non-renewal of contract

For any first-year probationary teacher whose contract is not to be renewed, the school administration should present a complete report and recommendation to the school board. It is recommended that this report be given in executive session, as permitted under the *Illinois Open Meetings Act*, rather than at an open meeting in order to avoid the possible constitutional requirement of a notice and hearing.[109] The board of education should then make its decision in a public meeting to renew or not renew the particular teacher's contract.[110] This decision is not subject to review under the *Administrative Review Act.*[111]

In determining not to renew the contract of a first-year probationary teacher, the board's decision need not be based on a specific cause.[112] Indeed, bad faith and subterfuge by the board in dismissing a first-year probationary teacher is not actionable.[113]

It appears that the decision not to renew may be based upon trivial or arbitrary reasons.[114] Note, however, that Section 24-11 of *The School Code* does not require that specific charges or reasons for dismissal be given to the teacher. Nor does it require that the board's decision be based upon one of the causes indicated in Section 10-22.4. (Section 10-22.4 governs dismissals of tenured and final-year probationary teachers, but does not govern decisions to not re-employ first-year probationary teachers effective for the next ensuing school term.[115])

Further, the distinction between remediable and non-reme-

diable causes for dismissal is not applicable to non-renewal decisions involving first-year teachers.[116] Therefore, no Notice to Remedy need be given.

Authorizing and serving notice

After deciding to not renew a first-year teacher's contract for the next school term, it is recommended that the board of education in a public meeting authorize by resolution the serving of a Notice of Non-Renewal upon the teacher. The resolution should authorize the serving of the Notice of Non-Renewal in the manner required by the statute, and should have attached to it a copy of the notice authorized. Prior to the adoption of the resolution, the minutes of the board meeting should reflect only that the administration recommended non-renewal.[117]

A suggested form of resolution authorizing a Notice of Non-Renewal is provided in *Figure 13*.

Section 24-11 of *The School Code* provides that notification of whether a first-year teacher will be re-employed for the following school term must be given by "the employing board." Accordingly, as indicated in *Figure 13*, the board should authorize its president and secretary to sign, serve, and deliver the notice to the teacher in the manner and time prescribed by law. It is clear that the authority to decide whether to re-employ a first-year probationary teacher lies solely with the board.[118] If the board fails to give proper notice as required in Section 24-11 of *The School Code*, the statute provides that the first-year probationary teacher shall be deemed re-employed, and the board must issue a regular contract to the teacher not later than the close of the then current school term.

Other statutory requirements of the Notice of Non-Renewal are that the Notice must:

- Be in writing;
- Contain a statement that the teacher will not be re-employed for the following school term;
- Be "received" by the teacher from the "employing board" at least 60 days before the end of the school term.

A suggested form for Notice of Non-Renewal is contained in *Figure 14*.

Figure 13—RESOLUTION RE

(Name of Teacher)

Authorizing Notice of Non-renewal

BE IT RESOLVED by the Board of Education of _____ School District Number _____, _____ County, Illinois, as follows:

SECTION 1: That this Board of Education hereby determines that (*name of teacher*) shall not be re-employed as a teacher in this School District for the next ensuing school term, and accordingly that the present contract of employment of (*name of teacher*) shall terminate at the close of the present school term.

SECTION 2: That the President and Secretary of this Board of Education are hereby authorized and directed to give to (*name of teacher*) notice of this Board's decision to not re-employ said teacher for the next ensuing school term, which shall be substantially in the form of Exhibit 1 attached hereto and made a part hereof.

SECTION 3: This Resolution shall be in full force and effect from and after its adoption.

ADOPTED this ____ day of _____, 19____, by the following roll call vote:

Ayes:

Nays:

Absent:

_____
President, Board of Education

_____
Secretary, Board of Education

Figure 14—NOTICE OF DECISION TO NOT RE-EMPLOY

Name and
address of teacher

Date

Dear _____ :

You are hereby notified that the Board of Education of _____ School District Number _____, _____ County, Illinois, has decided it will not re-employ you as a teacher in this School District for the ensuing school term, and your contract of employment will therefore terminate at the close of the present school term.

Very truly yours,

BOARD OF EDUCATION OF SCHOOL DISTRICT NUMBER _____, _____ COUNTY, ILLINOIS

By: _____
President

By: _____
Secretary

Potential constitutional problems

Proper service of the Notice of Non-Renewal ends the matter, because a first-year probationary teacher is entitled to neither a notice of reasons nor a hearing regarding the board's decision to not re-employ, except under limited circumstances (where the decision rests on a constitutionally impermissible basis, such as a teacher's exercise of First Amendment rights). These circumstances are not within the purview of this handbook.[99] Consequently, the board is only required to comply with the provisions of Section 24-11 of *The School Code*. However, if the board of education desires to publicly disclose specific reasons or charges for the decision to not renew the contract, a right to notice and hearing under *Board of Regents v. Roth*[100] and *Perry v. Sindermann*[101] may become involved.[102]

Dismissals During the School Term

Breach of contract

There is no dispute that a board of education has the authority to dismiss a non-tenured teacher during the school term[123] for material breach of contract or a cause stated in Section 10-22.4. (It is not recommended that a teacher be dismissed for a cause stated in Section 10-22.4 unless the cause clearly appears also to be a breach of contract.) The question, however, is posed as to whether in such instances the teacher is entitled to a notice of the reasons for his dismissal and a hearing to contest the dismissal, either under Illinois law,[124] or by virtue of the U.S. Constitution.[125]

Constitutional questions

The U.S. Supreme Court has indicated, as a matter of constitutional law, that a non-tenured teacher would be entitled to a notice of the reasons for his dismissal and a hearing if charges were made against him that:

1) "Might seriously damage his standing and associations in his community," such as a charge of dishonesty or immorality, or,
2) Impose "a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities," such as invoking a regulation to bar the teacher from all other employment in the state's public school districts.[126]

Since dismissals during the school term must be based upon a "cause" as specified in Section 10-22.4 of *The School Code*, a notice of specific reasons for dismissal and a hearing will be required under the rationale of *Board of Regents v. Roth*[127] if specific charges are made which bring the dismissal under the language quoted above.[128]

In addition, the discharge of a non-tenured teacher during the school term without an explanation of the underlying rea-

sons and a hearing to refute such reasons is a deprivation, without due process, of a teacher's "property" interest (that is, his rightful interest in the terms of his contract) under the 14th Amendment to the U.S. Constitution. In the *Hostrop* case, the Seventh Circuit Court of Appeals held that a president of a junior college was deprived of a legitimate property interest when he was discharged prior to the termination date established in his employment contract.[129] The court stated that a "term of employment set by contract has been recognized as a property interest which the state cannot extinguish without conforming to the dictates of procedural due process," citing the U.S. Supreme Court's decisions in *Sindermann* and *Roth*.[130] However, a recent Illinois appellate decision takes a contrary view as to whether federal constitutional questions are involved in the mid-term dismissal of a first-year probationary teacher. In *Vance v. Board of Education of Pekin Community High School District No. 303,*[131] the court treated the dismissal of a first-year teacher during the school term as essentially a breach of contract matter, and held that no questions of constitutional dimension were involved.[132] In *Vance*, the teacher appeared before the board of education and presented a statement, but the opinion does not indicate whether the board or the teacher had specifically requested the appearance. The court noted that the provisions of *The School Code* pertaining to the statutory powers of the school board automatically become a part of the teacher's employment contract, and held that the court would not interfere with the board's discretion in dismissing the teacher unless the exercise of the board's power was shown to be capricious or arbitrary.[133]

State law considerations

There remains the question as to whether either the *Illinois Constitution* (Article 1, Sections 2 and 3), or *The School Code* requires some form of notice of hearing, including a statement of the charges or grounds for dismissal. Clearly, under *Vance* and Section 10-22.4 of *The School Code* a mid-term dismissal must be for "cause." In *Lavin v. Board of Education,*[134] a case involving the dismissal of a second-year probationary teacher, the Illinois appellate court construed the 1970 *Illinois Constitu-*

tion in light of the U.S. Supreme Court decision in *Board of Regents v. Roth*,[135] and the later Seventh Circuit Court of Appeals cases following *Roth*, and appeared to apply the same standard under the Illinois constitution as the latter cases applied under the federal constitution, concluding that the dismissal did not violate the teacher's constitutional rights.

4/Service of notice

Statutory provisions

When a final-year probationary teacher is to be dismissed effective at the end of the school term, Section 24-11 of *The School Code* requires that he be "given written notice of dismissal . . . *by registered mail* by the employing board at least 60 days before the end of such (probationary) period."

In the dismissal of tenured and first-year probationary teachers, however, the statutes do not so precisely prescribe the mode of service of the notices. In the dismissal of a tenured teacher for the causes stated in Section 10-22.4 of *The School Code*, Section 24-12 requires that "written notice of such charges shall be served upon him (the teacher) at least 21 days before the hearing date . . . ." When a first-year probationary teacher is not to be re-employed for the following school term, Section 24-11 requires that he "shall receive written notice from the employing board at least 60 days before the end of any school term. . . ."

Although in both situations the statutes are silent as to how such service should be accomplished, the State Board Rules specify, in dismissal for cause proceedings brought against a tenured teacher, three methods for service of the notice of dismissal, and such other statutorily-required documents as the notice to remedy, bill of particulars and notice of hearing. In

such proceedings, service is to be by personal service, or by certified or registered mail, postage prepaid, to the teacher's last known address. (State Board Rule 1.02.) If service is made by personal delivery, it is recommended that a written record be made as to the exact time, date, place, and circumstances of the delivery.

In some jurisdictions where the statute is silent as to the method of transmitting the written notice from the board of education to the teacher, the notice may be hand-delivered, mailed by regular mail, or mailed as certified or registered mail.[136] But other jurisdictions have required personal service where the statute does not specify the manner in which notice should be given.[137]

In the absence of clear direction from Illinois courts, and with differing precedents from other jurisdictions, it is recommended that the notice of dismissal or non-renewal of a first-year probationary teacher be served by personal delivery, and that upon personal delivery, a written record as to exact time, place, and circumstances of delivery should be made.

In computing the dates by which notices must be provided and other acts performed under Sections 24-11 and 24-12 of *The School Code*, the school attorney should be consulted to insure computation in accordance with applicable Illinois statutes.[138]

Illinois court decisions

There are few reported Illinois court decisions interpreting the requirements relating to the service of notices under Sections 24-11 and 24-12 of *The School Code*.

In *Glover v. Board of Education*,[139] the school board voted to extend the probationary status of a teacher for an additional year, but did not serve notice by registered mail as required by Section 24-11. In sustaining the school board's action, the Illinois Supreme Court said:

> It is true that the statute prescribes registered mail as the vehicle for notification, whereas only ordinary mail was employed here. But where the plaintiff was notified in another manner and had actual knowledge that his probationary period had been extended, we hold that the notice requirement has been satisfied.

In *Donahoo v. Board of Education,*[140] notice of the dismissal of a probationary teacher was delivered in person, rather than by registered mail as required by the statute. The appellate court stated:

> . . . we believe it abundantly clear that delivery to the addressee in person constitutes full and sufficient compliance with the intent of the statute and satisfied its purpose even more fully than would literal compliance with the statute.

Other court decisions

The following court cases are illustrative of particular problems relating to the service of notices:

1) Where a notice of dismissal was personally served upon a teacher but she refused to accept it, it was held that the notice was properly served, since a teacher cannot escape the effect of the notice merely by refusing to take it;[141]

2) Where the statute required notice by certified or registered mail, or by leaving a copy at the teacher's usual abode, or by personal delivery to the teacher, a notice placed in his message box at school prior to the statutory deadline for service did not satisfy the statute; however, the teacher waived the defect by requesting a hearing and by his conduct at the hearing;[142]

3) There is a split of authority as to the sufficiency of a notice sent by registered mail on or before the statutory deadline and received after the expiration of the prescribed time period.[143] In one case,[144] the fact that the teacher was out of town during school holidays and did not receive the notice of dismissal until 5 days after the statutory deadline did not render the notice ineffective;

4) Where the notice of dismissal was sent by regular mail on or before the statutory deadline and received after the prescribed time period had elapsed, it has been ruled that such notice was insufficient to prevent the teacher's automatic re-employment by operation of the tenure law;[145]

5) Where the statute required that notice shall be sent by registered mail on or before a certain date or event, it has

been held that a notice sent by regular mail and received [illegible] the expiration of the prescribed time period is sufficient to prevent the teacher's automatic re-employment;[146]

6) Where the notice of the proposed dismissal was not received within the time specified by the statute, it has been held that the teacher was entitled to a teaching contract for the ensuing school term.[147]

As the above cases suggest, great care should be taken to insure that all notices and documents pertaining to dismissals are served properly and within the required time periods; failure to do so may result in a defective dismissal and in having to re-employ the teacher.

5/Footnoted citations

From 1/An Overview

1. *Graham v. Board of Education*, 15 Ill.App.3d 1092, 305 N.E.2d 310 (1973), where a school board policy of automatically extending the probationary period was held invalid as being contrary to the intent of Section 24-11 of *The School Code*; the option to extend is to be exercised by the board with discretion according to the merits of each individual teacher.

2. *The Illinois Education Association Local Community High School District 218, and Henry F. Davis v. The Board of Education, School District 218, Cook County, Illinois*, 23 Ill.App.3d 649, 320 N.E.2d 240 (1974), reviewed 62 Ill.2d 127, 340 N.E.2d 7 (1975).

From 2/The Tenured Teacher

3. *Wells v. Board of Education of Community Consolidated School District No. 64, Cook County*, 85 Ill.App.2d 312, 230 N.E.2d 6 (1967). Also, where the school board failed to set forth specific reasons or causes for a teacher's dismissal, the Illinois Supreme Court remanded the case to the board to make specific findings in *Reinhardt v. Board of Education*, 61 Ill.2d 101, 329 N.E.2d 218 (1975).

4. *Pearson* v. *Board of Education, Community Unit District No. 5, Macoupin County,* 12 Ill.App.2d 44 at 50, 138 N.E.2d 326 at 329 (1956). (Allegation that charges of failure to cooperate in notice of dismissal were insufficient.)

5. *Bates v. Hinds,* 334 F.Supp. 528 at 533 (N.D. Tex. 1971). *Cf. Gould v. Board of Education,* 32 Ill.App.3d 808, 339 N.E.2d 69 (1975).

6. For a review of these decisions to the year 1964, reference is made to "The 'Guiding Star' in Teacher Dismissals," by Thomas C. Kelleghan, 52 Ill.B.J. 422 (1964).

7. *Werner v. Community Unit School District No. 4, Marshall County,* 40 Ill.App.2d 491, 190 N.E.2d 184 (1963). *Jepsen v. Board of Education,* 19 Ill.App.2d 204, 153 N.E.2d 417 (1958).

8. *Wells v. Board of Education, supra* note 3. *Gilliland v. Board of Education,* 35 Ill. App. 3d 861, 343 N.E.2d 704 (1976).

9. Compare *Kallas v. Board of Education,* 15 Ill.App.3d 450, 304 N.E.2d 527 (1973) with *Paprocki v. Board of Education,* 31 Ill. App. 3d 112, 334 N.E.2d 841 (1975).

10. *Wells v. Board of Education,* supra note 3; *Hutchinson v. Board of Education,* 32 Ill.App.2d 247, 177 N.E.2d 420 (1961). For a case distinguishing the court's review of a board's initial decision of non-remediality prior to the notice of dismissal from its final decision after a hearing on the merits, see *Werner v. S.D. No. 4, supra* note 7.

11. *Hutchinson v. Board of Education, id; Allione v. Board of Education of South Park Community High School District No. 310, Christian County,* 29 Ill.App.2d 261, 173 N.E.2d 13 (1961); *Keyes v. Board of Education of Maroa Community Unit School District No. 2 of Macon and DeWitt Counties,* 20 Ill.App.2d 504, 156 N.E.2d 763 (1959); *Smith v. Board of Education of Community Unit School District No. 1 of Coles and Cumberland Counties,* 19 Ill.App.2d 224, 153 N.E.2d 377 (1958) (Abst.).

12. *Waller v. Board of Education, Century Community District No. 100,* 13 Ill.App.3d 1056, 302 N.E.2d 190 (1973); *Everett v. Board of Education,* 22 Ill.App.3d 594, 317 N.E.2d 753 (1974).

13. *Miller v. Board of Education of School District No. 132, Cook County,* 51 Ill.App.2d 20, 200 N.E.2d 838 (1964); *Hutchinson v. Board of Education, supra* note 10.

14. *Reinhardt v. Board of Education of Alton Community Unit School District No. 11, Madison and Jersey Counties,* 19 Ill.App.3d 481, 311 N.E.2d 710 (1974), *vacated in* 61 Ill.2d 101, 329 N.E.2d 218 (1975).

15. *People v. Board of Education of District 170,* 40 Ill. App.3d 819, 353 N.E.2d 147 (1976).

16. In two cases where the dismissal of **non-tenured** teachers was sustained by the courts of review, it appears that the second procedure was followed. In *Jewell v. Board of Education,* 19 Ill. App. 3d 1091, 312 N.E.2d 659 (1974), the board, after meeting in open session with the teacher and her attorney, went into executive session; in executive session the board unanimously agreed that the teacher should not be rehired. A motion was then made and seconded that the teacher be dismissed and that notice be sent by registered mail with reasons set forth therein for the dismissal. Upon the board's return to open session, the motion was read, giving the name of the board members who moved and seconded, and a roll call vote was held. In *Haight v. Board of Education,* 29 Ill. App.3d 48, 329 N.E.2d 442 (1975), the board in executive session decided to dismiss several teachers. Upon its return to open session, the board by roll call vote authorized ". . . the Superintendent of Schools, if this action becomes necessary, to send a notice of dismissal to one first year teacher and a notice of dismissal stating the specific reasons therefor to one second year teacher . . ." A dissenting opinion in the *Haight* case strongly argued that the failure of the resolution to name the teacher violated the directives of the Open Meetings Act.

17. *Paprocki v. Board of Education, supra* note 9.

18. *Everett v. Board of Education, supra* note 12.

19. *Baldwin v. Fresno City Unified School District,* 125 Cal. App.2d 44, 269 F.2d 942 (1954); *Baugh v. Board of Education,* 244 Ala. 522, 14 So.2d 508 (1943); and *Knickerbocker v. Redlands High School District,* 49 Cal.App.2d 722, 122 P.2d 299 (1942).

20. *Illinois Revised Statutes,* chapter 122, section 24-12; *Bessler v. Board of Education of Chartered School District 150,* 11 Ill. App. 3d 210, 296 N.E.2d 89 (1973); *Cf. Haight v. Board of Education, supra* note 16; *Fucinari v. Dearborn Board of Education,* 32 Mich.App. 108, 188 N.W.2d 229 (1971); *State ex rel. Rutherford v. Barberton Board of Education,* 148 Ohio St. 242, 74 N.E.2d 246 (1947).

21. *Lusk v. Community Consolidated School District 95 of Lake County,* 20 Ill.App.2d 252, 155 N.E.2d 650 (1959).

22. *Wade v. Granite City Community Unit School District 9, Madison County,* 71 Ill.App.2d 34, 218 N.E.2d 19 (1966).

23. *Pearson v. Board of education, supra* note 4.

24. *Wells v. Board of Education, supra* note 3.

25. *Pearson v. Board of Education, supra* note 4.

26. *Yuen v. Board of Education School District No. 46, Kane, Cook and DuPage Counties,* 77 Ill.App.2d 353, 222 N.E.2d 570 (1966).

27. *Pearson v. Board of Education, supra* note 4.

28. *Pearson v. Board of Education, supra* note 4.

29. See *Ferguson v. Thomas,* 430 F.2d 852 (5th Cir. 1970) for a decision that minimum due process requires that a non-tenure teacher, under certain circumstances, must be advised of the names and nature of the testimony of the witnesses against him. See page 61, *infra.*

30. *Classroom Teachers Association v. Board of Education*, 15 Ill. App. 3d 224, 304 N.E.2d 516 (1973); *Illinois Education Association v. Board of Education*, 23 Ill. App. 3d 649, 320 N.E.2d 240 (1974).

31. *Illinois Education Association and Henry F. Davis v. Board of Education, supra* note 2.

32. See *Board of Trustees v. Teachers Union*, 62 Ill. 2d 470, 343 N.E.2d 373 (1975); *Wesclin Education Association v. Board of Education*, 30 Ill. App. 3d 67, 331 N.E.2d 335 (1975) where an evaluation clause proved unenforceable in establishing conditions precedent to the dismissal of non-tenured teachers in excess of conditions imposed by *The School Code; Lockport Special Education Co-op v. Co-op Association*, 33 Ill.App.3d 789, 338 N.E.2d 463 (1975).

33. Miller v. Board of Education, *supra* note 13; *Eidenmiller v. Board of Education of Community High School District No. 505, Bureau County*, 28 Ill.App.2d 90, 170 N.E.2d 792 (1960) (Abst.); *Lusk v. Community Consolidated School District 95, supra* note 21.

34. *Hutchinson v. Board of Education, supra* note 10; *Allione v. Board of Education, supra* note 11, *Keyes v. Board of Education, supra* note 11, *Smith v. Board of Education, supra* note 11.

35. *Reinhardt v. Board of Education, supra* note 14; *Lane v. Board of Education, Fairbury-Cropsey*, 38 Ill.App.3d 742, 348 N.E.2d 470 (1976).

36. *Illinois Revised Statutes*, chapter 122, section 24-16 and chapter 110, section 264, et seq., as amended.

37. *Illinois Revised Statutes*, chapter 122, sections 10-23.8 and 10-23.8a.

38. Certification of teachers is covered by Article 21 of *The School Code*.

39. *Lester v. Board of Education of School District No. 119, Jo Daviess County*, 87 Ill.App.2d 269, 230 N.E.2d 893 (1967).

40. *McNely v. Board of Education*, 9 Ill.2d 143, 137 N.E.2d 63 (1956) and *Van Dyke v. Board of Education of School District No. 57*, 115 Ill.App.2d 10, 254 N.E.2d 76 (1969); *Lane v. Board of Education, Fairbury-Cropsey, supra* note 35

41. *Lester v. Board of Education, supra* note 39, and *Van Dyke v. Board of Education, supra* note 40.

42. *Illinois Revised Statutes*, chapter 122, section 24-11.

43. *Wilson v. Board of Education*, 327 Ill.App. 338, 64 N.E.2d 380, rev'd on other grounds, 394 Ill. 197, 68 N.E.2d 257 (1946).

44. *Van Dyke v. Board of Education, supra* note 40.

From 3/The Probationary Teacher

45. *Wade v. Granite City Community Unit School District 9*, supra note 22.

46. *Simcox v. Board of Education of Lockport, Township of Will County*, 443 F.2d 40 at 46 (7th Cir. 1971) (concurring opinion); and *Roth v. Board of Regents*, 310 F.Supp. 972 at 978-979 (W.D. Wisc. 1970) reversed on other grounds, 408 U.S. 564 (1972).

47. *Donahoo v. Board of Education of School District 303*, 413 Ill. 422, 109 N.E.2d 787 (1953). Compare *Hutchinson v. Board of Education, supra* note 10, with *Wade v. Granite City School District, supra* note 22, with regard to the determination of what constitutes specific reasons for dismissal.

48. "Closed sessions to consider information regarding appointment, employment or dismissal of an employee" are permitted, but no final action may be taken at a closed session. *Illinois Revised Statutes,* chapter 102, section 42. Also see *People v. Board of Education of District 170, supra* note 15.

49. *Bishop v. Wood,* 423 U.S. 890, 48 L.Ed.2d 684, 688 (1976).

50. See note 16 for a discussion of findings in *Jewell v. Board of Education* and *Haight v. Board of Education.*

51. *Baldwin v. Fresno City Unified School District, supra* note 19; *Baugh v. Board of Education, supra* note 19, and *Knickerbocker v. Redlands High School District supra* note 19.

52. *Illinois Revised Statutes,* chapter 122, section 24-11 and *Pearson v. Board of Education, supra* note 4.

53. See cases cited in note 47, *supra; Mt. Healthy City School District v. Doyle,* ___ U.S. ___, 45 U.S.L.W. 4079 (January 11, 1977); *Jeffries v. Turkey Run Consolidated School District,* 492 F.2d petition for rehearing denied, 500 F.2d 711 (7th Cir. 1974); *Burns v. Board of Education of Fairfield School District,* 47 Ill. App. 3d 589 (May 10, 1977).

54. See *Board of Regents v. Roth,* 408 U.S. 564, 33 L.Ed.2d 548 (1972); *Shirck v. Thomas,* 447 F.2d 1025 (7th Cir. 1971) vacated and remanded in light of *Roth,* 408 U.S. 940, (1972); see also *Shirck v. Thomas,* 486 F.2d 691 (7th Cir. 1973); *Ferguson v. Thomas, supra* note 29.

55. *Board of Regents v. Roth, supra* note 54.

56. *Perry v. Sindermann,* 408 U.S. 593, 33 L.Ed.2d 570 (1972).

57. *Hostrop v. Board of Junior College District 515, et al.,* 471 F.2d 488 (7th Cir. 1972); U.S. *cert. denied* 411 U.S. 967 (1973).

58. *Miller v. School District No. 167, Cook County, Illinois,* 354 F.Supp. 922 at 926 (N.D.Ill. 1973), affirmed on other grounds, 495 F.2d 658 (7th Cir. 1974) petition for rehearing denied, 500 F.2d 711 (7th Cir. 1974); but see *Vance v. Board of Education of Community High School District No. 303,* 2 Ill.App.3d 745, 277 N.E.2d 337 (1971).

59. *Shirck v. Thomas,* 486 F.2d 691, 692 (7th Cir. 1973).

60. *Board of Trustees v. Teachers Union, supra* note 32.

61. *Suckle v. Madison General Hospital,* 499 F.2d 1364, 1366 (7th Cir. 1974).

62. *Shirck v. Thomas,* 486 F.2d 691 at 692 (7th Cir. 1973); see also *Christensen v. Board of Education Township High School No. 203,* 489 F.2d 758 (7th Cir. 1973), not to be published; *Franz v. Board of Education of Riverside School District No. 96,* _____ F.2d _____ (7th Cir. 1974) (General No. 73-1563, May 17, 1974); *Wesclin Education Association v. Board of Education, supra* note 32.

63. *Hostrop v. Board of Junior College District 515, et al., supra* note 57.

64. *Lipp v. Board of Education of City of Chicago,* 470 F.2d 802 at 805 (7th Cir. 1972).

65. *Hostrop v. Board of Junior College District 515, et al., supra* note 57.

66. *Miller v. School District No. 167, supra* note 58; *Shah v. School District No. 40, et al.,* No. 73-2061 (7th Cir. April 26, 1974, unpublished); *Shirck v. Thomas, supra* note 62; see also *Adams v. Walker,* 492 F.2d 1003, 1008-1009 (7th Cir. 1974); *Paul v. Davis,* 424 U.S. 693, 47 L.Ed.2d 405 (1976), rehearing denied, 425 U.S. 985.

67. *Bishop v. Wood, supra* note 49.

68. *Roth v. Board of Regents*, 446 F.2d 806 (7th Cir. 1971), reversed on other grounds, 408 U.S. 564 (1972), and *Shirck v. Thomas, supra* note 54.

69. See page 62, *infra*.

70. *Roth v. Board of Regents, supra* note 68, at page 808; *Shirck v. Thomas, supra* note 54, at page 1026.

71. *Hostrop v. Board of Junior College District 515, et al., supra* note 57.

72. *E.g., Ferguson v. Thomas, supra* note 29.

73. *Roth v. Board of Regents, supra* note 68, and *Shirck v. Thomas, supra* note 54.

74. *Franz v. Board of Education, supra* note 62.

75. See page 62, *infra*.

76. *McDonough v. Kelly*, 329 F.Supp. 144 (D. N.H. 1971).

77. *Ferguson v. Thomas, supra* note 29 at 857; *Bates v. Hinds, supra* note 5 at 532. See also *Goldberg v. Kelly*, 397 U.S. 254 (1970).

78. *Cafeteria and Restaurant Workers v. McElroy*, 367 U.S. 886 at 895 (1961).

79. *Hannah v. Larche*, 363 U.S. 420 at 442 (1960).

80. See *Board of Regents v. Roth, supra* note 54.

81. *Hostrop v. Board of Junior College District 515, et al., supra note 57.*

82. *Roth v. Board of Regents, supra* note 46; see also *Goldberg v. Kelly, supra* note 77, a case involving determination of the procedures necessary in the termination of welfare benefits, where the U.S. Supreme Court elabor-

ated on the elements of a fair hearing, and included the right to retain counsel. *Id.* at 270-271.

83. *Hostrop v. Board of Junior College District 515, et al., supra* note 57.

84. *Roth v. Board of Regents, supra* note 68 at page 809; *Shirck v. Thomas, supra* note 54 at pages 1027-1028.

85. *Shirck v. Thomas, supra* note 54; see also *Drown v. Portsmouth School District*, 451 F.2d 1106 at 1108 (1st Cir. 1971); *Mt. Healthy City School District v. Doyle*, ____ U.S. ____, 45 U.S.L.W. 4079 (January 11, 1977).

86. *Gibson v. Berryhill*, 411 U.S. 564, 579, 36 L.Ed.2d 488 (1973).

87. *Gibson v. Berryhill, supra* note 86; *Ward v. Monroeville*, 409 U.S. 57, 34 L.Ed.2d 267 (1972); *Tumey v. Ohio*, 273 U.S. 510, 71 L. Ed. 2d 749 (1927). Cf. *Commonwealth Coating Corp. v. Continental Casualty Co.*, 393 U.S. 145, 21 L.Ed.2d 301 (1968).

88. *Taylor v. Hayes*, 418 U.S. 488, 501-03, 41 L.Ed.2d 897 (1974); *Mayberry v. Pennsylvania*, 400 U.S. 455, 27 L.Ed.2d 532 (1971); *Pickering v. Board of Education*, 391 U.S. 563, 578-79 n. 2, 20 L.Ed.2d 811 (1968). Cf. *Unger v. Sarofite*, 376 U.S. 575, 584, 11 L.Ed.2d 921 (1964).

89. *Withrow v. Larkin*, 421 U.S. 35, 47, 43 L.Ed.2d 712 (1975).

90. *Hortonville Joint School District No. 1 v. Hortonville Education Association*, ____ U.S. ____, 96 S.Ct. 2308 (1976).

91. *Fender v. School District 25, Arlington Heights*, 37 Ill. App.3d 736, 347 N.E.2d 270 (1976). Cf. *Tetmeier v. Board of Education*, 5 Ill.App.3d 982, 284 N.E.2d 380 (1972); *Pittel v. Board of Education*, 20 Ill.App.3d 580, 315 N.E.2d 179 (1974).

92. *Roth v. Board of Regents, supra* note 68; *Shirck v. Thomas, supra* note 54.

93. *Hagerstrom v. Clay City Community Unit School District No. 10,* 36 Ill.App.3d 1, 343 N.E.2d 249 (1976); *Glover v. Board of Education,* 21 Ill.App.3d 1053, 316 N.E.2d 534 (1974) (dissenting opinion), *affirmed,* 62 Ill.2d 122, 340 N.E.2d 4 (1975).

94. *Yuen v. Board of Education, supra* note 26.

95. *Miller v. Board of Education, supra* note 13.

96. *Lusk v. Community Consolidated School District 95, supra* note 21.

97. *Chandler v. East St. Louis School District 189,* 35 Ill.App.2d 317, 182 N.E.2d 774 (1962).

98. The board must act with great care and discrimination to be objective. Its performance of multiple functions is referred to in the concurring opinion in *Eidenmiller v. Board of Education, supra* note 33, as quoted in "The 'Guiding Star' in Teacher Dismissals," *supra* note 6, as follows: "We deal not with a dual role, not with a triple role, but with the quadruple roles of complainant, prosecutor, judge and witness in a single tribunal." Quoting the United States Supreme Court, he (the Judge giving the concurring opinion) charges that: "A statute which compels a litigant to submit his controversy to a tribunal of which his antagonist is a member makes his antagonist his judge and does not afford due process of law." See also *Miller v. Board of Education, supra* note 13.

99. *Christensen v. Board of Education, supra* note 62.

100. *Gouge v. Joint School District,* 310 F.Supp. 984 at 992 (W.D. Wisc. 1970).

101. *McDonough v. Kelly, supra* note 76.

102. *Jeffries v. Turkey Run Consolidated School District,* 492 F 2d petition for rehearing denied, 500 F.2d 711 (7th Cir.

1974); but see *Drown v. Portsmouth School District, supra* note 85, and the prior appeal in the *Drown* case, 435 F.2d 1182 (1st Cir. 1970). Cf. *Mt. Healthy City School District v. Doyle, supra* note 85.

103. *Drown v. Portsmouth School District, supra* note 85; see also *Ahern v. Board of Education of School District of Grand Island,* 327 F.Supp. 1391 at 1396 (D.Neb. 1971), affirmed in 456 F.2d 399 (1972).

104. *Shirck v. Thomas, supra* note 54.

105. *Ferguson v. Thomas, supra* note 29 at 857-58.

106. *Pyle v. Washington County School Board,* 238 So.2d 121 (Fla.App.1970).

107. *Goldberg v. Kelly, supra* note 77.

108. *Graham v. Board of Education, supra* note 1.

109. See pages 54, *et. seq., supra.*

110. *Illinois Revised Statutes,* chapter 102, section 42; *Roth v. Board of Regents, supra* note 68. *Fucinari v. Dearborn Board of Education, supra* note 20.

111. *Illinois Revised Statutes,* chapter 122, section 24-11; see also *Illinois Revised Statutes,* chapter 122, section 24-16.

112. *Illinois Revised Statutes,* chapter 122, section 24-11.

113. *Rockford Education Ass'n v. Board of Education,* 11 Ill. App.3d 78, 296 N.E.2d 100 (1973).

114. Compare *Board of Regents v. Roth, supra* note 54, (which implies that the interest of a first-year probationary teacher in renewal of his teaching contract is not an interest in liberty or property which is protected by the 14th Amendment to the U.S. Constitution) with *Perry v. Sindermann, supra* note 56, (which implies that the non-renewal of a non-tenure teacher's contract may not be

based upon reasons which infringe the teacher's constitutionally protected interests). See also *Mt. Healthy City School District v. Doyle, supra* note 85; *People ex rel. Fursman v. City of Chicago*, 278 Ill. 318, 116 N.E. 158 (1917); *Jeffries v. Turkey Run Consolidated School District, supra* note 102. *Drown v. Portsmouth School District, supra* note 85; *Jones v. Hopper*, 410 F.2d 1323 (10th Cir. 1969); *Freeman v. Gould Special School District of Lincoln County*, 405 F.2d 1153 (8th Cir. 1969); *Ahern v. Board of Education, supra* note 103; *Parker v. Board of Education of Prince George's County, Maryland*, 237 F.Supp. 222 at 227 (and cases cited therein), *aff'd per curiam*, 348 F.2d 464 (4th Cir. 1965).

115. *Illinois Revised Statutes*, chapter 122, section 24-11.

116. *Id.*

117. See page 54, *supra*.

118. See *Fucinari v. Dearborn Board of Education, supra* note 20.

119. *Board of Regents v. Roth, supra* note 54; *Perry v. Sindermann, supra* note 56. *Mt. Healthy City School District v. Doyle, supra* note 85.

120. See *supra* note 54.

121. See *supra* note 56.

122. See discussion on pages 58 *et seq., supra*.

123. *Illinois Revised Statutes*, chapter 122, section 10-22.4 (1973); *Hartmann v. Board of Education of Westville Township High School District No. 220*, 356 Ill. 577, 191 N.E. 279 (1934); *Vance v. Board of Education of Pekin Community High School District No. 303, supra* note 58; *Betebenner v. Board of Education of West Salem Community High School District No. 201*, 336 Ill.App. 448, 84 N.E.2d 569 (1949); *Cadman v. School Directors of School District No. 14*, 288 Ill.App. 627, 6 N.E.2d 246 (1936) (Abst.).

124. See *Betebenner v. Board of Education, id.* (dictum, citing *Hartmann v. Board of Education, id.*).

125. See *Board of Education v. Roth, supra* note 54; *Perry v. Sindermann, supra* note 56; *Cooley v. Board of Education of Forrest City School District*, 453 F.2d 282 (8th Cir. 1972); *Bomar v. Keyes*, 162 F.2d 136 (2nd Cir. 1947); *Schreiber v. Joint School District No. 1*, 335 F.Supp. 745 (E.D. Wisc. 1972); *Bates v. Hinds, supra* note 5; *Ahern v. Board of Education, supra note 103; Parker v. Board of Education of Prince George's County, supra* note 114.

126. *Board of Regents v. Roth, supra* note 54.

127. *Id.*

128. See discussion on page 58 *et seq., supra.*

129. *Hostrop v. Board of Junior College District No. 515, et al., supra* note 57.

130. See *Perry v. Sindermann, supra* note 56, and *Board of Regents v. Roth, supra* note 54. See also *Cooley v. Board of Education, supra* note 125 at 285-86, wherein the Court emphasized the distinction between a mid-term termination and a mere failure to re-employ. The Court indicated that the application of due process principles is of "particularized importance" when a teacher is summarily terminated "prior to the natural expiration of the school year." *Id.* at 286: "Given the ensuing economic hardship of a summary deprivation of the source of one's livelihood, and in view of the awesome and potentially stigmatizing effect of mid-year termination, such a case as this assuredly presents one of the clearest instances where the rule of procedural Due Process, properly applied, must operate to interdict injurious and reckless governmental treatment . . . . (I)n our view, a mid-year discharge increases the economic hardship and renders even greater the likelihood that subsequent employment opportunities will be significantly circumscribed."

131. *Vance v. Board of Education, supra* note 58.

132. But see *Hostrop v. Board of Junior College District No. 515, et al., supra* note 57 at 494, n. 15.

133. *Vance v. Board of Education, supra* note 58 at 749, 277 N.E.2d at 340.

134. *Lavin v. Board of Education,* 22 Ill.App.3d 555, 317 N.E.2d 717 (1974).

135. *Board of Regents v. Roth, supra* note 54.

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136. *E.g., Weckerly v. Mona Shores Board of Education,* 28 Mich.App. 243, 184 N.W.2d 323 (1970); Cf. *State ex rel. Peake v. Board of Education of South Point Lake School District,* 44 Ohio St. 2d 119, 339 N.E.2d 249 (1975).

137. *E.g., School District No. 6 of Pima County v. Barber,* 85 Ariz. 95, 332 P.2d 496 (1958); *Robel v. Highline Public Schools,* 65 Wash.2d 477, 398 P.2d 1 (1965).

138. See also *Prior v. People,* 107 Ill. 628 (1883); *Illinois Revised Statutes,* chapter 100, section 6, and chapter 131, section 1.11.

139. *Glover v. Board of Education,* 62 Ill.2d 122, 340 N.E.2d 4 (1975).

140. *Donahoo v. Board of Education,* 346 Ill.App. 241, 104 N.E.2d 833 (1952), reversed on other grounds, 413 Ill. 422, 109 N.E.2d 787 (1953).

141. *State ex rel. Sights v. Edwards,* 228 Ind. 13, 88 N.E.2d 763 (1949).

142. *Reagan v. Board of Directors, Republic School District No. 309,* 4 Wash.App. 279, 480 P.2d 807 (1971).

143. See 92 ALR 2d 751. Compare *Ledbetter v. School District No. 8*, 163 Colo. 127, 428 P.2d 912 (1967) and *Weckerly v. Mona Shores Board of Education, supra* note 136, with *School District No. 6 of Pima County v. Barber, supra* note 137.

144. *Ledbetter v. School District No. 8, supra* note 143.

145. *Blalock v. Ridgway*, 92 Cal. App. 132, 267 P.713 (1928).

146. *Volandri v. Taylor*, 124 Cal.App. 356, 12 P.2d 462 (1932). For a similar ruling regarding probationary teacher dismissals, see *Steele v. Board of Trustees of Pittsburgh Public Schools*, 121 Cal.App. 419, 9 P.2d 217 (1932).

147. *State ex rel. Brinker v. Coffin*, 229 Ind. 476, 99 N.E.2d 249 (1951); *Brown v. Board of Education*, 242 Ala. 154, 5 So.2d 629 (1942); *Mozaleski v. Hanover Township School Directors*, 28 Pa. D&C 300, 30 Luzerne Leg. Reg.R. 457. See also *Illinois Revised Statutes*, chapter 122, section 24-11. But see also *State ex. rel. Sights v. Edwards, supra* note 141, and *Reagan v. Board of Directors, supra* note 142.

6/Appendix

RULES AND REGULATIONS GOVERNING THE PROCEDURE FOR THE DISMISSAL OF TENURED TEACHERS IN THE STATE OF ILLINOIS

Adopted February 12, 1976
State Board of Education
State of Illinois

1. Definitions

1.01 "Tenured Teacher" means any teacher that has entered upon contractual continued service pursuant to School Code Section 24-11.

1.02 "Service" shall mean service of any document by personal service or by certified or registered mail, postage prepaid, to the individual's last known address.

1.03 "Parties" means the teacher against whom charges are brought and the school board bringing the charges.

1.04 "Board" refers to the local school board and not to the State Board of Education.

2. Applicability of These Rules And Regulations

2.01 These Rules and Regulations apply to: (a) the dismissal of tenured teachers for "reason or cause" as delineated in School Code, Section 24-12, and (b) controversies arising under Section 24-11, par. 5.

2.02 These Rules and Regulations do not apply to:

(1) dismissal of non-tenured teachers;

(2) dismissal as a result of a decrease in the number of teachers employed;

(3) dismissal as a result of a discontinuance of a particular teaching service;

(4) dismissal of a teacher who attains retirement age.

3. Initiation of Dismissal Proceedings

3.01 Where the conduct which gives rise to the causes or reasons for dismissal is remediable the board must serve the teacher with reasonable warning in writing, stating specific causes which, if not removed, may result in termination.

3.02 In the event the grounds are not remediable or in the event the grounds are not remedied after proper warning the board must approve a motion for dismissal which contains specific grounds for dismissal.

(a) This motion must be approved by a majority of all the board's members.

(b) The teacher must be served with the notice of dismissal motion within 48 hours.

(c) Such notice shall inform the teacher that he/she has ten days from the date of the motion to request in writing that no hearing be scheduled.

3.03 Within ten days after the approval of the motion, the board shall schedule a hearing unless the teacher requests that no hearing be held.

(a) This hearing is to be scheduled no less than 30 nor more than 60 days after the approval of the motion.

(b) After a hearing date is set a NOTICE OF DISMISSAL is to be served on the teacher and the

State Board of Education within five days by the Secretary of the Board.

(c) The NOTICE OF HEARING sent to the State Board of Education must be accompanied by a certified copy of the board's motion and vote for dismissal.

(d) Within ten days after receiving the NOTICE OF HEARING, the State Board shall provide the local board of education and the teacher with a list of five prospective impartial hearing officers.

(e) Within five days after receipt of the list of impartial hearing officers, first the teacher and then the board or their authorized agents or attorneys shall alternately strike one name from the list until only one name remains. That person shall be the hearing officer.

(f) Within five days thereafter, the State Board of Education shall be notified of the person designated as hearing officer.

3.04 Written notice of the charges shall be served on the teacher at least 21 days before the hearing.

(a) This notice shall contain a bill of particulars.

(b) At the same time, a copy of said notice of charges and a bill of particulars shall be sent to the State Board of Education to be forwarded to the designated hearing officer.

3.05 The teacher, the board and the hearing officer may mutually agree upon the time and place of the hearing. If there is a dispute as to time or place, the hearing officer shall fix the time and place upon request made to the State Board of Education. If the hearing officer is fixing the place of hearing it must be within the district's boundaries.

4. Rules and Regulations Regarding The Appointment of Hearing Officers

4.01 All hearing officers proposed by the State Board of Education shall possess the following qualifications:

(1) They must be accredited by a national arbitration association.

(2) They must be a non-resident of the school district involved in the hearing at the time of the hearing.

(3) They must be disinterested and impartial.

(4) They must have no financial or personal interest in the result of the hearing.

4.02 Notice of the appointment of the hearing officer shall be mailed to the hearing officer by the State Board of Education and the signed acceptance of the hearing officer shall be filed with the State Board of Education within five days of receipt of notice of appointment.

4.03 Upon notice of his/her appointment as a hearing officer, the prospective hearing officer shall disclose any circumstances which (s)he believes might disqualify him/her as an impartial hearing officer.

(a) Upon receipt of such information the State Board shall immediately disclose it to the parties.

(b) The parties may waive the presumptive disqualification.

(c) If either party declines to waive the presumptive disqualification, the State Board shall declare a vacancy.

4.04 If any hearing officer shall resign, die, withdraw, refuse or be unable or disqualified to perform the du-

ties of his/her position, the State Board shall, on proof satisfactory to it, declare the position vacant.

(a) Vacancies shall be filled in the same manner as that governing the making of the original appointment.

(b) Should the vacancy occur during the course of the hearing, the entire matter shall be reheard by the new hearing officer.

4.05 The State Board of Education shall pay the hearing officer a per diem of up to $250. Billing procedures shall be arranged on an individual basis between the State Board and the hearing officer.

4.06 All communication from the parties to the hearing officer other than at oral hearing shall be in writing and copies shall be sent at the same time to the opposing party and the State Board of Education.

5. Suspension Pending The Hearing

5.01 If in the opinion of the board the interests of the school require it, the board may suspend the teacher pending the hearing.

5.02 If acquitted, the teacher shall not suffer the loss of any salary by reason of the suspension.

6. The Hearing

6.01 The hearing shall be public at the request of either the board or the teacher. The hearing officer shall exclude witnesses during the testimony of other witnesses upon the motion of either party.

6.02 The parties may be present and represented at the hearing by counsel and by other authorized representatives.

6.03 The order of proceedings shall be as follows:

(1) The hearing shall be opened by the recording of the place, time, and date of the hearing, the presence of the hearing officer and the parties and counsel, if any, and any stipulations as to facts. Pre-hearing motions shall be heard at this time.

(2) Upon the opening of the hearing, the hearing officer shall allow the parties to make opening statements.

(3) The board shall proceed first to present its evidence.

(4) The teacher may confront the witnesses, offer evidence and present a defense.

(5) All testimony shall be taken under oath administered by the hearing officer.

(6) The hearing officer may issue subpoenas requiring the attendance of witnesses and, at the request of either of the parties shall issue such subpoenas but may limit the number of witnesses to be subpoenaed in behalf of either party to not more than ten.

(7) The hearing officer shall cause a record of the proceedings to be kept and shall employ a competent reporter to take stenotype notes of all the testimony. The State Board of Education shall pay for the attendance and services of the court reporter.

(8) Exhibits, when offered by either party, may be received in evidence by the hearing officer. The names and addresses of all witnesses and exhibits in order received shall be made a part of this record. The hearing officer shall make rulings on the admissibility of exhibits.

(9) The hearing officer for good cause shown may continue the hearing upon the request of the teacher or the board or upon his own initiative, and shall adjourn when the teacher and the board agree thereto.

(10) The hearing may proceed in the absence of either party, who, after due notice, fails to be present or fails to obtain a continuance.

(11) A decision of dismissal shall not be made solely on the default of the teacher. The hearing officer shall require the board to submit such evidence as (s)he may require to an understanding and determination of the dispute, including but not limited to proof of due notice.

(12) The hearing officer may, in his discretion, vary the normal procedure under which the board first presents its claim, but in any case shall afford full and equal opportunity to all parties for presentation of relevant proofs.

(13) Upon the close of the hearing each party may make a closing statement (orally and/or written at the discretion of the hearing officer) incorporating arguments of fact and law.

6.04 Evidentiary Rules to be following during the hearing shall be as follows:

(1) The parties may offer such evidence as they desire and shall produce such additional evidence as the hearing officer may deem necessary to an understanding and determination of the dispute.

(2) The hearing officer shall be the judge of the relevancy and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary.

(3) Objections to evidentiary offers may be made and shall be noted in the record. The hearing officer shall have the power to make rulings including the power to exclude evidence. "Offers of Proof" shall be permitted.

(4) Any hostile witness may be examined as if under cross examination.

(5) All documents not filed with the hearing officer at the hearing but which are arranged at the hearing or subsequently by agreement of the parties to be submitted, shall be filed with the State Board of Education for transmission to the hearing officer and other parties.

6.05 Before closing the hearing the hearing officer shall inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the hearing officer shall declare the hearing closed and a minute thereof shall be recorded.

7. The Decision

7.01 The hearing officer shall, with reasonable dispatch, make a decision in writing as to whether or not the teacher shall be dismissed. Such decision shall include findings of facts.

7.02 This decision should be rendered no later than 30 days from the date of closing the hearing.

7.03 A copy of the decision shall be given to the State Board of Education to be forwarded to both the teacher and the school board.

7.04 The decision of the hearing officer is final unless reviewed under the Administrative Review Act as provided in Section 24-16 of the School Code.

(a) If neither party appeals then either party desiring a transcript of the hearing shall pay for the cost thereof.

(b) In the event such review is instituted, any costs of preparing and filing the record of proceedings shall be paid by the board.

(c) The record of the hearing shall include:

1. all pleadings and exhibits;
2. a statement of matters officially noticed;
3. a transcript of the hearing;
4. the decision of the hearing officer.

8. Waiver, Interpretation And Application of These Rules And Regulations

8.01 Any party who proceeds with the hearing after knowledge that any provision of these Rules prior to hearing has not been complied with and fails to state his objection thereto in writing to the State Board of Education or the hearing officer shall be deemed to have waived his/her right to object.

8.02 The hearing officer shall interpret and apply these Rules and Regulations insofar as they relate to his/her powers and duties and shall follow any court interpretation of these Rules and Regulations.

8.03 All other Rules shall be interpreted and applied by the State Board of Education.

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